TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 74

THE NORFOLK AND WESTERN RAILWAY COMPANY AND MRS. C. L. SATTERFIELD, PLAINTIFFS IN ERROR,

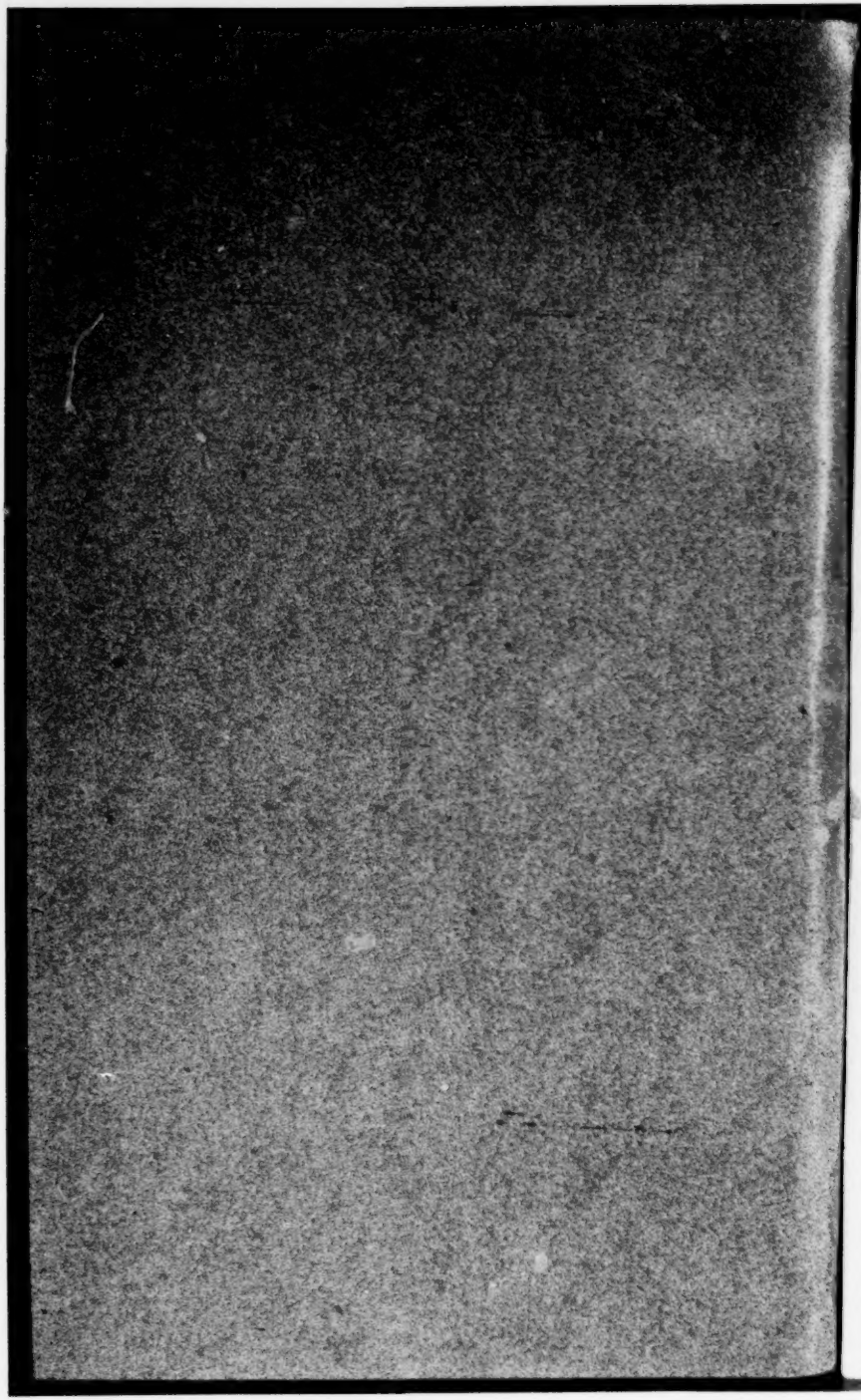
vs.

JOHN R. SIMS, SHERIFF OF PERSON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED JUNE 14, 1902.

(18,587.)



(18,587.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 359.

THE NORFOLK AND WESTERN RAILWAY COMPANY AND MRS. O. L. SATTERFIELD, PLAINTIFFS IN ERROR,

vs.

JOHN R. SIMS, SHERIFF OF PERSON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Caption	1	1
Writ of error	2	1
Citation and service	4	2
Assignment of errors	5	2
Bond on writ of error	9	5
Proceedings in superior court of Person county	11	6
Submission of controversy without action	11	6
Facts agreed	12	7
Affidavit of plaintiff	18	10
Decision and judgment	18	11
Appeal	21	13
Judge's certificate	21	13
Exceptions of appellants	22	13
Bond on appeal	23	14
Clerk's certificate	24	15
Docket entries	27	15
Opinion	27	15
Judgment	28	16
Stipulation for stay of proceedings, &c	29	16
Clerk's certificate	30	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 17, 1902.

1 North Carolina Supreme Court.

JOHN R. SIMS, Sheriff of Person County,
against
NORFOLK & WESTERN RAILWAY COMPANY and MRS. O. L. SATTERFIELD.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of North Carolina, before you, or some of you, being the highest court of law or equity of said State, in which a decision could be had in said suit between John R. Sims, sheriff of Person county, and The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, in which the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield were appellants, wherein was drawn in question the validity of a statute, or an authority exercised under, of said State on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity; and wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemptions specially set up or claimed under such clause of the said Constitution, all of which appears in the record and proceedings in said suit, manifest error has happened, to the great damage of the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield, as by their complaint and contentions appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things therein
3 concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, within thirty days from the date of this writ in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, the 30th day of May, in the year of our Lord nineteen hundred and two.

[Seal United States Circuit Court, Eastern Dist. of N. C.]

N. J. RIDDICK,
Clerk of the Circuit Court of the United States for the Eastern District of North Carolina.

Allowed.

DAVID M. FURCHES,
Chief Justice of the Supreme Court of North Carolina.

Fee, $1.20, paid by W. A. Guthrie, att'y.

(Filed in supreme court of North Carolina May 30, 1902.)

4 UNITED STATES OF AMERICA, *ss:*

To Jno. R. Sims, sheriff of Person County, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2nd Monday, 13th day of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of North Carolina, wherein The Norfolk & Western Railway Company and Mrs. O. L. Satterfield are the plaintiffs and Jno. R. Sims, sheriff of Person county, is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable D. M. Furches, chief justice of the supreme court of North Carolina, this the 30th day of May, in the year of our Lord nineteen hundred and two.

DAVID M. FURCHES,
Chief Justice.

Service of the above citation and receipt of a copy thereof admitted. This the 30th day of May 1902.

JAS. E. SHEPHERD,
Attorney for Jno. R. Sims, Sheriff of Person County, North Carolina.

(Filed in supreme court of North Carolina May 30, 1902.)

5 (Title of Cause.)

Assignment of Errors.

And now on this the 30th day of May, 1902, comes the defendants, The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, plaintiffs in error, by their attorneys William A. Guthrie and William B. Guthrie, and say that in the record and proceedings

in the above-entitled cause, submitted without action under the provisions of the Code of North Carolina, there is error in that:—

First. The said supreme court of North Carolina erred in deciding and holding in the opinion handed down, and in the judgment rendered by said court in this cause, that there is "no error" in any of the several rulings, holdings and judgment of the superior court of Person county, North Carolina upon the facts agreed, set forth in the record in this cause, thereby fully sustaining and affirming in each and every particular the said rulings, holdings and judgment of said superior court of Person county, and the plaintiffs in error assign the same as error, contending now, as heretofore, that the aforesaid rulings, holdings and judgment of the said superior court of said Person county should have been wholly reversed by said supreme court of North Carolina.

Second. And for a more particular and specific assignment of errors, the plaintiffs in error say there was error in the following particulars, and in each of the following rulings and holdings of the court upon the facts agreed set forth in the record: (1) "That the sale of the sewing machine referred to in the case agreed took place in the State of North Carolina, and it follows that the vendors, Sears, Roebuck & Co. are liable for the license tax imposed by section 52 chapter 9 Public Laws of North Carolina, session 1901." (2) "That the license tax follows said sewing machine into the hands of the purchaser." (3) "That by payment of the purchase price to the
6 express agent at Roxboro, N. C. and in securing the bill of lading, the defendant Mrs. O. L. Satterfield did not acquire a good and unincumbered title to said sewing machine." (4.) "That any levy made or threatened to be made by the plaintiff as sheriff of Person county upon said sewing machine for the license tax of said Sears, Roebuck & Co. is not in violation of the rights of the defendant, Mrs. O. L. Satterfield, as a purchaser of said sewing machine." (5.) "That any levy made or threatened to be made by plaintiff upon said sewing machine, while it is in the possession of the defendant The Norfolk & Western Railway Co., for the license tax of said Sears, Roebuck & Co. is not and would not be an unlawful interference with interstate commerce, nor an unlawful interference with the rights, privileges and duties of said Norfolk & Western Railway Co. as a common carrier engaged in business of interstate commerce." (6.) "That if the defendant The Norfolk & Western Railway Co should, upon the receipt of the carrier charges and surrender to it of the bill of lading, actually deliver said sewing machine to the defendant Mrs. O. L. Satterfield, it would thereby render itself liable to prosecution for a misdemeanor, and for the penalties provided in sections 101 and 103 chapter 9 Public Laws 1901." (7.) "That in making its deliveries of other machines in several places in this State, through their agents, the railroads and express companies in pursuance of the contract and arrangement set forth in the statement of facts herein, Sears, Roebuck & Co., are indebted to the State in the sum of three hundred & fifty dollars for license tax." (8.) "That the incomplete transaction as to the particular machine in controversy was of itself an 'attempt to sell' and

also makes the said Sears, Roebuck & Co. liable to the State for the said sum of three hundred & fifty dollars license tax as set forth in the preceding section." (9.) "That the particular machine in
7 controversy having been levied upon before the presentation of the bill of lading was subject to such levy for the payment of said indebtedness to the State, subject to the charges of the defendant railway Co. for carriage and storage as warehousemen." (10.) "That the said railroads and express agents in acting as the agents of Sears, Roebuck & Co. as set forth in the statement of facts, are subject to the fines and penalties provided in section 52 chapter 9 Public Laws 1901." (11.) "That said machines are subject to levy for said tax after delivery, and in the hands of the purchaser."

Third. And the judgment set forth in the record based upon and rendered by the court, pursuant to the foregoing erroneous rulings, holdings and decisions of the said superior court of Person county, which was upon exceptions thereto and upon appeal therefrom sustained by said supreme court of North Carolina, was also erroneous.

Fourth. The said supreme court of North Carolina, in the opinion handed down in this cause, erred in deciding and holding that the section of the revenue act of North Carolina, chapter 9 section 52 Public Laws 1901 referred to and quoted in the opinion, did apply to the transactions set forth in the facts agreed upon in this cause, and thereby in effect erroneously decided and held that the interstate-commerce clause of the Constitution of the United States did not apply to said transaction, or to any other similar commercial transactions between Sears, Roebuck & Co. and their customers in North Carolina.

Fifth. The said supreme court of North Carolina in the aforesaid opinion of said court, delivered by Mr. Justice Clark, misconceived the agreed facts as to whom and how the plaintiff in error Mrs. O. L. Satterfield paid the purchase price of the sewing machine, the court in said opinion assuming that "payment was made to the common carrier (railway company) acting as agent for the shipper;" whereas the facts agreed set forth that the purchase price of the sew-
8 ing machine was made to the express company, and her contention heretofore and still is that thereupon she acquired a good title to the sewing machine, which was not subject to be divested by any sheriff's levy thereon for tax claims aginst the vendors, Sears, Roebuck & Co. of Chicago.

Wherefore the said plaintiffs in error pray that the judgment of the supreme court of North Carolina be reversed and that such orders and decrees be made, and further proceedings had, as the plaintiffs in error may be entitled to.

Dated at Raleigh, N. C. May 30, 1902.

WM. A. GUTHRIE AND
WM. B. GUTHRIE,
Attorneys for Norfolk & Western Railway Co. and Mrs. O. L. Satterfield, Plaintiffs in Error.

(Filed in the supreme court of North Carolina May 30, 1902.)

9 (Title of Cause.)

Bond.

Know all men by these presents that we, The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, as principals, and J. S. Carr and P. W. Vaughan, as sureties, are held and firmly bound to the defendant John R. Sims, sheriff of Person county North Carolina, in the full and just sum of five hundred dollars to be paid to the said defendant John R. Sims, sheriff of Person county North Carolina and his successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated the 30th day of May in the year of our Lord nineteen hundred and two.

Whereas, lately in the supreme court of North Carolina, in a suit pending in said court between John R. Sims, sheriff of Person county, plaintiff, and The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, defendants, judgment was rendered against the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield, and the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John R. Sims, sheriff of Person county citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the 13th day of October next: Now, the condition of the above obligation is such that if the said Norfolk & Western Railway Company and Mrs. O. L. Satterfield shall prosecute the said writ of error to effect and answer all damages and costs if they fail to make the said plea good, then the said obligation to be void; otherwise to remain in full force and effect.

10 NORFOLK & WESTERN RAILWAY COMPANY,
By WM. A. GUTHRIE,
WM. B. GUTHRIE, *Its Attorneys.*
MRS. O. L. SATTERFIELD,
By WM. A. GUTHRIE AND
WM. B. GUTHRIE, *Her Attorneys.*
JULIAS S. CARR. [SEAL.]
P. W. VAUGHAN. [SEAL.]

STATE OF NORTH CAROLINA, }
City and County of Durham. }

J. S. Carr, being duly sworn, says he is a freeholder and a resident of the city and county of Durham aforesaid and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities, and in excess of his homestead and personal property exemptions allowed by law.

JULIAN S. CARR.

Subscribed and sworn to before me this the 30th day of May, A. D. 1902.

W. J. HALLOWAY,
[L. S.] *Notary Public.*

STATE OF NORTH CAROLINA, }
City and County of Durham. }

P. W. Vaughan being duly sworn says he is a freeholder and a resident of the city and county of Durham aforesaid and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities, and in excess of his homestead and personal property exemptions allowed by law.

P. W. VAUGHAN.

Subscribed and sworn to before me this the 30th day of May A. D. 1902.

W. J. HOLLOWAY,
[L. S.] *Notary Public.*

Approved by—
DAVID M. FURCHES,
Chief Justice of the Supreme Court of North Carolina.

(Filed in the supreme court of North Carolina May 30, 1902.)

11 In the Supreme Court.

From Person County.

Submission of Controversy Without Action.

NORTH CAROLINA, }
Person County. }

Superior Court.

JNO. R. SIMS, Sheriff of Person County, }
against }
NORFOLK AND WESTERN RAILWAY COMPANY and MRS. O. L. Satterfield. }

There being a controversy as is hereinafter set forth, between the plaintiff and the defendants, The Norfolk and Western Railway Company and Mrs. O. L. Satterfield, which might be the subject of a civil action, the plaintiff and the defendants hereby mutually agree to submit said controversy without action under the provisions of sections 567, 568 and 569, of the Code of North Carolina, to the Honorable Walter H. Neal, judge of the superior court, holding the superior courts at the spring terms thereof in the ninth judicial district, which said judicial district embraces the county of Person, for his adjudication, decision and judgment, at chambers within said judicial — on the 7th day of January, 1902, or as soon thereafter as the court can conveniently hear and consider the same upon the following facts agreed upon between the parties:

12 *Facts Agreed.*

1. That the plaintiff, Jno. R. Sims, is now, and was at the times hereinafter mentioned, sheriff and *ex officio* the tax collector of the public State and county taxes in and for said county of Person, in the State of North Carolina.

2. That the defendant, The Norfolk and Western Railway Company, is a railroad corporation duly created, organized and existing under, and by virtue of the laws of the State of Virginia.

3. That the defendant, The Norfolk and Western Railway Company, is, and was at the times hereinafter mentioned, the owner of, and engaged as a common carrier of passengers and freights in the business of operating the interstate railroad known as the "Lynchburg and Durham division of the Norfolk and Western railway," situated between the city of Lynchburg, in the said State of Virginia, and the city of Durham, in the said State of North Carolina, said interstate railroad extending from the main line of said Norfolk and Western railway at and in said city of Lynchburg, Virginia, to and across the boundary line between the State of Virginia and the State of North Carolina; thence into and through the said county of Person, in said State of North Carolina, via Roxboro in said county of Person, to the city of Durham, in the county of Durham, in said State of North Carolina.

4. That Sears, Roebuck & Co. (incorporated), of the city of Chicago, in the State of Illinois, are manufacturers and dealers in sewing machines, at and in the city of Chicago, in the State of Illinois.

5. That the defendant, Mrs. O. L. Satterfield, who is a citizen and resident of said county of Person, in the said State of North Carolina, on or about the 1st day of November, 1901, sent an unqualified and specific order and contract on her part by mail to said Sears,

13 Roebuck & Co., to said city of Chicago, Illinois, for the sewing machine hereinafter mentioned, which said sewing machine was thereupon shipped as railroad freight by said Sears, Roebuck & Co., from said city of Chicago, Illinois, to the defendant, Mrs. O. L. Satterfield, to Roxboro, in said county of Person, North Carolina, said Sears, Roebuck & Co., on November 5, 1901, procuring from the railroad carrier at and in said city of Chicago, Illinois, a bill of lading in the usual form "on order to notify," for said sewing machine; that is to say, the carrier under the contract provisions in said bill of lading bound itself and its connecting lines of railroad between Chicago, Illinois, and Roxboro, North Carolina, to said Sears, Roebuck & Co., the consignors, that said sewing machine would be transported and delivered by the carriers to the consignee, the defendant, Mrs. O. L. Satterfield, at Roxboro, North Carolina, upon the presentation and surrender of said bill of lading to the defendant's (Norfolk and Western Railway Company) agent at Roxboro, North Carolina, the point of destination, and payment of the carrier's freight charges thereon. Said bill of lading was sent by said Sears, Roebuck & Co., by express C. O. D. to the express agent at Roxboro, North Carolina, who received, as express agent, the

purchase price of said sewing machine, and thereupon delivered the bill of lading to the defendant, Mrs. O. L. Satterfield. The express agent and the railway agent being one and the same person, to wit, A. P. Gilbert.

6. That the defendant, Mrs. O. L. Satterfield, has paid said Sears Roebuck & Co. the purchase price for said sewing-machine, and now has in her possession the aforesaid bill of lading, which was issued as aforesaid to said Sears, Roebuck & Co., and has presented said bill of lading to A. P. Gilbert, the station agent of the defendant
14 Norfolk and Western Railway Company at Roxboro, North Carolina, and has tendered to said A. P. Gilbert, the station agent of the defendant Norfolk and Western Railway Company at Roxboro, North Carolina, ($1.41) one and $\frac{41}{100}$ dollars, the carrier's freight charges on said sewing machine, and offered to surrender said bill of lading to the defendant, The Norfolk and Western Railway Company, and has demanded of the defendant, The Norfolk and Western Railway Company, the delivery to her of said sewing machine, and such delivery being refused because of the action and interference of the plaintiff as is hereinafter set forth, the defendant, Mrs. O. L. Satterfield, threatens to bring a civil action in claim and delivery proceedings against the defendant, The Norfolk and Western Railway Company, for the delivery of said sewing machine to her, and damages for its detention, and to join the plaintiff in said civil action as a party defendant for that purpose.

7. That as a common carrier of freight, the defendant, Norfolk and Western Railway Company, on or about the — day of November, 1901, at a point on its railway system, outside the boundaries of said State of North Carolina, from a connecting line of railroad, received for transportation and carriage over its aforesaid interstate line of railway (Lynchburg and Durham division of the Norfolk and Western railway) the aforesaid sewing machine to be transported to its said station at Roxboro, North Carolina, and there to be delivered to the defendant, Mrs. O. L. Satterfield, the consignee, upon payment of the carrier's charges thereon, and the presentation by the said Mrs. O. L. Satterfield, the defendant, of the aforesaid bill of lading, and the surrender thereof to the station agent of the defendant, Norfolk and Western Railway Company, at Roxboro, North Carolina.

15 8. That said sewing machine was transported over the aforesaid interstate railroad of the defendant, Norfolk and Western Railway Company to Roxboro, North Carolina, and is now in possession of the defendant, Norfolk and Western Railway Company, at its said Roxboro station, ready to be delivered to the defendant, Mrs. O. L. Satterfield, the holder of said bill of lading, upon the surrender of said bill of lading and payment of the freight charges on said sewing machine as aforesaid; and the defendant, Norfolk and Western Railway Company is willing and anxious to comply with her demand if it is lawful to do so under the circumstances.

That as is hereinbefore stated, the defendant, Mrs. O. L. Satterfield, has offered as aforesaid to surrender said bill of lading and

tendered payment of the aforesaid freight charges on said sewing machine, and demanded delivery thereof to her, but her said demand has not been complied with by the defendant, Norfolk and Western Railway Company, because of the action and threatened action of the plaintiff as is hereinafter set forth.

9. That the defendant, Norfolk and Western Railway Company, has duly complied with chapter 9, Public Laws of North Carolina, entitled "An act to raise revenue," ratified the 15th day of March, A. D. 1901, and has paid the Schedule "C" license taxes under sections 87, 88 and 89 of said chapter, for the privilege of carrying on its aforesaid railroad business as a common carrier within the said State of North Carolina.

10. That the said Sears, Roebuck & Co., of Chicago, Illinois, the consignors named in the aforesaid bill of lading, have not paid the license tax for selling sewing machines within the State of North Carolina, provided for in section 52 of said chapter 9, Public Laws of North Carolina, 1901, and have made several deliveries at various points in North Carolina on the lines of other interstate rail-
16 roads running into North Carolina, upon the presentation of bills of lading under the same conditions as above described.

11. That the plaintiff, as sheriff and *ex officio* tax collector in and for the said county of Person, claiming that he has the lawful right to interfere in this regard with the defendant's aforesaid business as a railroad common carrier, has forbidden the delivery, and has notified the defendant, Norfolk and Western Railway Company, to withhold and stop the delivery of the aforesaid sewing machine to the defendant, Mrs. O. L. Satterfield, the consignee thereof, until the aforesaid license tax for selling the same in North Carolina shall have been paid, and in case the said sewing machine should be actually delivered by the defendant, Norfolk and Western Railway Company, under the circumstances aforesaid, then, and in that event, the plaintiff claims that the defendant Norfolk and Western Railway Company would, by such delivery, be acting as agent for said consignors, Sears, Roebuck & Co., and the defendant Norfolk and Western Railway Company would be thereby aiding, and assisting, and abetting, said Sears, Roebuck & Co. in the unlawful sale of said sewing machine within said county of Person, North Carolina, and the defendant, Norfolk and Western Railway Company, would therefor- be liable to prosecution for a misdemeanor, and would also be subject to the penalty therefor of fifty dollars, to be recovered by the plaintiff in a civil action before a justice of the peace of said Person county, under the provisions of section 103 of said chapter 9, Public Laws of 1901, and for such unlawful delivery of said sewing machine to the consignee thereof, the defendant, Mrs. O. L. Satterfield, the plaintiff threatens to prosecute the defendant Norfolk and Western Railway Company, both civilly and criminally as
17 aforesaid. The plaintiff also claims that after delivery by the agent to Mrs. O. L. Satterfield, the machine is attachable in her hands until the taxes are paid. The plaintiff also claims that he is entitled to hold said sewing machine for the taxes, provided

the charges of the railway company for carriage are paid to the company.

12. That with such interference with the business of the defendant as aforesaid, the defendant, Norfolk and Western Railway Company, on its part complains of the plaintiff, and threatens to sue him in a civil action for damages therefor, and for such other relief as the defendant may be adjudged by a court of competent jurisdiction to be entitled to.

But the parties to this submission of controversy without action being desirous of having the questions of law involved therein speedily determined, and their respective rights and duties in the premises declared by the court, do hereby submit the foregoing facts agreed for the opinion, decision and judgment of the court thereon, it being understood and agreed between and among the parties that the right of appeal from the decision and judgment of the court is hereby expressly reserved.

Dated at Roxboro, North Carolina, this the 30th day of December, 1901.

JNO. R. SIMS, *Sheriff of Person County.*
NORFOLK & WESTERN RAILWAY CO.,
By GUTHRIE & GUTHRIE,
Attorneys for Norfolk and Western R'y Co.
MRS. O. L. SATTERFIELD,
By O. L. SATTERFIELD, *Agent.*

18 NORTH CAROLINA, }
Person County. }

Jno. R. Sims, the plaintiff, and A. P. Gilbert, who is local station agent of the defendant, Norfolk and Western Railway Company, at Roxboro, North Carolina, being duly sworn, each for himself maketh oath, that the foregoing controversy is real, and the proceedings are in good faith to determine the rights of the parties.

JNO. R. SIMS,
Sheriff of Person County.
A. P. GILBERT,
Local Agent Norfolk and Western R'y Co.

Sworn to and subscribed before me this the 30th day of December, 1901.

D. W. BRADSHER,
Clerk Superior Court, Person County.

Decision and Judgment.

NORTH CAROLINA, *Person County.*

In the Superior Court.

JNO. R. SIMS, Sheriff of Person County, *against* NORFOLK AND WESTERN RAILWAY COMPANY and MRS. O. L. Satterfield.

This case submitted without action under the Code of North Carolina upon the facts agreed, coming on to be heard by consent of the parties at chambers in the city of Durham, within the ninth judicial district, on the 7th day of January, 1902, and the same being heard by the court at the time appointed upon the facts agreed, after argument of counsel on both sides upon the
19 questions of law involved in this controversy, the court took the papers reserving its decision until the 25th day of January, 1902, at and in the said city of Durham, when and where the court handed down the following decision and judgment as follows, to wit:

The court is of the opinion, and so decides, as follows, to wit:

1. That the sale of the sewing machine referred to in the case agreed took place in the State of North Carolina, and it follows that the vendor, Sears, Roebuck & Co., are liable for the license tax imposed by section 52, chapter 9, Public Laws of North Carolina, session 1901.

2. That the license tax follows said sewing machine into the hands of the purchaser.

3. That by payment of the purchase price to the express agent at Roxboro, N. C., and securing the bill of lading, the defendant, Mrs. O. L. Satterfield, did not acquire a good and unencumbered title to said sewing machine.

4. That any levy made, or threatened to be made, by the plaintiff as sheriff of Person county upon said sewing machine for the license tax of said Sears, Roebuck & Co., is not in violation of the rights of the defendant, Mrs. O. L. Satterfield, as a purchaser of said sewing machine.

5. That any levy made, or threatened to be made, by plaintiff upon said sewing machine, while it is in the possession of the defendant, Norfolk and Western Railway Company, for the license tax of said Sears, Roebuck & Co., is not, and would not be, an unlawful interference with interstate commerce, nor an unlawful interference with the rights, privileges and duties of said Norfolk and Western Railway Company as a common carrier engaged in the business of interstate commerce.

20 6. That if the defendant, Norfolk and Western Railway Company, should upon receipt of the carrier charges and surrender to it of the bill of lading, actually deliver said sewing ma-

chine to the defendant, Mrs. O. L. Satterfield, it would thereby render itself liable to prosecution for a misdemeanor, and for the penalty provided in sections 101 and 103, chapter 9, Public Laws of 1901.

7. That in making its deliveries of other machines in several places in this State, through their agents, the railroads and express companies in pursuance of the contract and arrangement set forth in the statement of facts herein, Sears, Roebuck & Co., are indebted to the State in the sum of three hundred and fifty dollars for license tax.

8. That the incomplete transaction as to the particular machine in controversy was of itself an "attempt to sell," and also makes the said Sears, Roebuck & Co. liable to the State for the said sum of three hundred and fifty dollars' license tax, as set forth in the preceding section.

9. That the particular machine in controversy having been levied upon before the presentation of the bill of lading, was subject to such levy for the payment of said indebtedness to the State, subject to the charges of the defendant railway company for carriage and storage as warehouseman.

10. That the said railroads and express agents in acting as the agents of Sears, Roebuck & Co., as set forth in the statement of facts, are subject to the fines and penalties provided in section 52, chapter 9, Public Laws of 1901.

11. That said machines are subject to levy for said tax after delivery, and in the hands of the purchaser.

It is therefore adjudged that Sears, Roebuck & Co. are indebted to the State of North Carolina in the sum of three hundred
21 and fifty dollars for license tax in selling and attempting to sell sewing machines without a license, and that the levy by the plaintiff, sheriff, upon the machine in question, was and is lawful and valid, and that after paying the defendant railway company the freight and warehouse charges upon the same, he proceed to sell said sewing machine, and apply the proceeds to the payment of said tax. That upon payment to it by the plaintiff, sheriff, of said freight and warehouse charges, the said defendant, railway company, has no right to hold the said machine as against the plaintiff. That the defendant, Norfolk and Western Railway Company, has no legal right to deliver said sewing machine to its codefendant, Mrs. O. L. Satterfield. That the defendants pay the costs of this controversy submitted without action to be taxed by the clerk of the superior court of Person county.

Let the clerk of the superior court of Person county file the case agreed in his office, and enter the foregoing decision and judgment as the judgment of the superior court of said county of Person.

WALTER H. NEAL,
Judge Superior Court, Holding the Courts of the Ninth Judicial District.

From the foregoing judgment the defendants appeal to the supreme court. Notice of appeal given and accepted. Appeal bond in the sum of $25.00 adjudged sufficient.

By consent of counsel on both sides the case agreed, and the foregoing decision and judgment of this court, shall constitute the record and case on appeal to the supreme court.

WALTER H. NEAL,
Judge Superior Court, Holding the Courts of the Ninth Judicial District.

22 *Exceptions of Appellants (Defendants) to the Decision and Judgment of the Court upon the Facts Agreed.*

NORTH CAROLINA, }
Person County. }

In the Superior Court.

JOHN R. SIMS, Sheriff of Person County,
against
NORFOLK AND WESTERN RAILWAY COMPANY and Mrs. O. L. SATTERFIELD.

In compliance with rule 27 of the supreme court of North Carolina, the appellants (the defendants) file the following exceptions to the decision and judgment of the court in the above-stated controversy submitted without action, to wit:

1. Appellants except to the decision of the court numbered "first."
2. Appellants except to the decision of the court numbered "second."
3. Appellants except to the decision of the court numbered "third."
4. Appellants except to the decision of the court numbered "fourth."
5. Appellants except to the decision of the court numbered "fifth."
6. Appellants except to the decision of the court numbered "sixth."
7. Appellants except to the decision of the court numbered "seventh."
8. Appellants except to the decision of the court numbered "eighth."
9. Appellants except to the decision of the court numbered "ninth."
10. Appellants except to the decision of the court numbered "tenth."

23 11. Appellants except to the decision of the court numbered "eleventh."

Appellants except to the decision and judgment of the court as set out in the record.

Dated at Durham, N. C., January 25, 1902.

GUTHRIE & GUTHRIE.
Attorneys for Defendants, Appellants.

Filed in the office of the clerk of the superior court of Person county, North Carolina, this the 27th day of January, 1902.

D. W. BRADSHAW,
Clerk Superior Court, Person County.

Undertaking for Costs on Appeal.

NORTH CAROLINA, *Person County.*

Superior Court.

JNO. R. SIMS, Sheriff of Person County,
against
NORFOLK AND WESTERN RAILWAY COMPANY and Mrs. O. L. Satterfield.

Whereas, the above-named defendants have appealed to the supreme court of North Carolina from the decision and judgment rendered against them, and in favor of the plaintiff, in the above-entitled controversy submitted without action in the superior court of Person county:

Now, therefore, we, the undersigned, undertake in the sum of twenty-five dollars that the appellants will pay all costs
24 & 25 which may be awarded against them, or either of them, on said appeal, not to exceed the sum of twenty-five dollars.

This the 25th day of January, 1902.

NORFOLK & WESTERN RAILWAY CO. AND MRS. O. L. SATTERFIELD,
By GUTHRIE & GUTHRIE, *Attorneys.*
WM. A. GUTHRIE.

NORTH CAROLINA, *Durham County.*

Wm. A. Guthrie, the surety to the foregoing undertaking, being duly sworn, says that he is a freeholder in the county of Durham, in said State, and worth double the amount of the foregoing undertaking for costs over and above his just debts and liabilities and exemptions allowed by law.

WM. A. GUTHRIE.

Sworn and subscribed before me this the 25th day of January, 1902. Witness my hand and official notarial seal.

[SEAL.] W. J. HOLLOWAY,
Notary Public.

Filed in my office this January 27, 1902.
D. W. BRADSHER,
Clerk Superior Court, Person County.

Certificate.

Be it remembered, that the foregoing constitutes a true copy of the case agreed, the submission, the judgment, appellant's exceptions, and the formal orders, and the case on appeal, as appears of record in my office in the foregoing controversy without action, en-
26 titled, "Jno. R. Sims, sheriff of Person county, *vs.* Norfolk and Western Railway Company, and Mrs. O. L. Satterfield," which was submitted under sections 567, etc., of the Code of North Carolina, at chambers, to Honorable Walter H. Neal, judge holding the courts of the ninth judicial district, and which has been duly docketed in my office as required by law under direction of the court.

Witness my hand and official seal at Roxboro, in said county of Person, this the 27th day of January, 1902.
[SEAL.]
D. W. BRADSHER,
Clerk Superior Court, Person County.

27 (*Docket Entries.*)

Appeal of defendant docketed February 3, 1902—Argued April 3, 1902 by Guthrie & Guthrie for defendant appellant, Shepherd & Shepherd and the attorney general for plaintiff appellee). Opinion of the court delivered May 27, 1902 as follows:—

CLARK, *J.*:

Laws 1901 chapter 9, section 52 provides that, "Every manufacturer of sewing machines, and every person or persons, or corporation, engaged in the business of selling the same in this State, shall, before selling or offering for sale any such machine, pay to the State treasurer a tax of three hundred and fifty dollars and obtain a license," and makes the failure to do so a misdemeanor.

By the "facts agreed" in this case it appears that Sears, Roebuck & Co. of Chicago have not paid said tax nor obtained a license, and that prior to this transaction they had made several deliveries at various points in North Carolina on the lines of other interstate railroads running into this State, and that all these shipments, like the one here in question, were made on bills of lading providing that the sewing machine should not be delivered till it was paid for by the person named as consignee. Thus the title could not pass till payment was made to the common carrier, acting as agent of the shipper. This was an executory contract in Illinois, but there was no sale till the payment was made, and thus the sale was executed in North Carolina and the shippers are liable to the above tax. The title to this machine having remained in the shipper until such payment (Tiedeman on Sales sects. 95, 97) the machine was properly levied on before such payment for the license tax due by the shippers. Laws 1901 ch. 9 sec. 101 (last paragraph of section). The

well-known case of O'Neal *v.* Vermont, 104 U. S. 324, is decisive of the point. There, in the shipment of liquor from New York
28 into Vermont, C. O. D. it was held that the completed executory contract was in New York, and the completed sale was in Vermont—as here.

Ober *v.* Smith, 78 N. C. 313; State *v.* Groves, 121 N. C. 632, relied on by defendants were cases of an unconditional delivery to the common carrier, and of course the title passed to the consignee upon delivery to the carrier. State *v.* Wernwag, 116 N. C. 1061 is much like the present case. No error.

(Title of Cause.)

Judgment.

This cause came on to be argued upon the transcript of the record from the superior court of Person county; upon consideration whereof this court is of opinion that there is no error in the record and proceedings of the said superior court. It is therefore considered and adjudged by the court here that the opinion of the court as delivered by the Honorable Walter Clark, justice, be certified to the said superior court to the intent that the judgment be affirmed; and it is considered and adjudged further that the defendants and surety do pay the costs of the appeal in this court incurred, to wit the sum of twelve $\frac{70}{100}$ dollars, and let execution issue therefor.

29 (Title of Cause.)

Agreement and Stipulation.

Whereas, the defendants above named, The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, have procured a writ of error to the supreme court of North Carolina in order to have the decision and judgment of said court reviewed by the Supreme Court of the United States, and have complied with the requirements of law in that behalf: It is hereby mutually stipulated and agreed between the above-named parties to this controversy without action, that no attempt shall be made to enforce the judgment in this cause until after the final determination and judgment herein of the Supreme Court of the United States shall have been rendered, and in the meantime pending the hearing before the Supreme Court of the United States, the sewing machine referred to in this cause shall be and remain undisposed of, and subject to the levy already made thereon by the plaintiff, John R. Sims, by virtue of his office as sheriff of Person county, N. C., to await the decision of the Supreme Court of the United States.

Dated at Raleigh, North Carolina this 30th day of May 1902.

JAS. E. SHEPHERD,
Attorney for John R. Sims, Sheriff of Person County, North Carolina.

WM. A. GUTHRIE,
Attorney for Norfolk & Western Railway Co. and Mrs. O. L. Satterfield.

30 *Certificate.*

I, Thomas S. Kenan, clerk of the supreme court of North Carolina, do hereby certify the foregoing to be a full, true and correct copy of the record in the case of John R. Sims, sheriff of Person county against The Norfolk & Western Railway Company and Mrs. O. L. Satterfield, as appears from the same on file in this court.

Given under my hand and seal of said court at office in Raleigh on this the seventh day of June 1902.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN,
Clerk Supreme Court of North Carolina.

Endorsed on cover: File No. 18,587. North Carolina supreme court. Term No. 359. The Norfolk and Western Railway Company and Mrs. O. L. Satterfield, plaintiffs in error, *vs.* John R. Sims, sheriff of Person county. Filed June 14th, 1902.

IN THE SUPREME COURT OF THE UNITED STATES.

The Norfolk and Western Railway Company and Mrs. O. L. Satterfield, Plaintiffs in Error,	October Term, 1902.
vs.	No. 359.
John R. Sims, Sheriff of Person County.	

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA, No. 18,587.

STATEMENT OF CASE AND BRIEF FOR THE PLAINTIFFS IN ERROR.

STATEMENT OF CASE.

The action in this case was by John R. Sims, sheriff of Person County, North Carolina, in the Superior Court of that county, against the Norfolk and Western Railway Company and Mrs. O. L. Satterfield to subject the company to the fines and penalties provided by section 52, Act of the General Assembly of North Carolina entitled "An Act to Raise Revenue," ratified March 15th, 1901. (Public Laws of North Carolina, 1901, page 116.) A complete copy of this Act is presented with this brief in a separate pamphlet for the convenience of the Court's examination. Section 52 of the Act provides, *inter alia*, at page 134 of the Public Laws of North Carolina of 1901, as follows:—

"Every manufacturer of sewing machines, and every person or persons or corporation engaged in the business of selling the

same in this State, shall, before selling or offering for sale any such machine, pay to the State Treasurer a tax of $350 and obtain a license, which shall operate for one year from the date of issue, and all licenses provided for in this section shall be countersigned by the State Auditor, and shall not be valid unless so countersigned."

This Act is entitled—

"An Act to Raise Revenue."

The facts were agreed upon on behalf of the parties and are not in dispute. See page 7 of the Record.

Stated conveniently, the facts are these:—

The Norfolk and Western Railway Company as a common carrier operates an interstate railroad extending from its main line at Lynchburg, Virginia, crossing the boundary line between Virginia and North Carolina, running thence via Roxboro, in Person County, North Carolina, to Durham, in Durham County, North Carolina. The railway company had complied with the Act of Assembly of North Carolina entitled "An Act to Raise Revenue," ratified March 15th, 1901, and had paid the schedule C license tax, under sections 87, 88, and 89 thereof, for the privilege of carrying on its railroad business as a common carrier within the State of North Carolina.

Sears, Roebuck & Co. are manufacturers and dealers in sewing machines at Chicago, in the State of Illinois.

Mrs. Satterfield, a resident of Person County, North Carolina, about November 1st, 1901, sent an order by mail to Sears, Roebuck & Co., in Chicago, Illinois, for a sewing machine. The sewing machine was shipped as railroad freight from Chicago, Illinois, by Sears, Roebuck & Co., to Mrs. Satterfield, at Roxboro, North Carolina. The railroad carrier at Chicago issued on behalf of itself and its connecting railroad lines, a through bill of lading therefor, under which the sewing machine was to be delivered by the carriers to Mrs. Satterfield, at Roxboro, North Carolina, on the surrender of the bill of lading and payment of freight charges.

The Norfolk and Western Railway Company was the delivering carrier in the link of connecting railroads between

Chicago, Illinois, and Roxboro, North Carolina, and received the sewing machine at a point outside North Carolina from a connecting line of railroad.

The bill of lading was sent by Sears, Roebuck & Co. by express C. O. D. to the express agent at Roxboro, North Carolina, who received from Mrs. Satterfield the price of the sewing machine, and delivered the bill of lading to Mrs. Satterfield; the express agent and the railroad station agent being one and the same person.

Mrs. Satterfield presented the bill of lading to the station agent of the Norfolk and Western Railway Company at Roxboro, tendered the freight charges, and demanded the delivery of the sewing machine.

The defendant in error, the sheriff and *ex-officio* tax collector of Person County, claimed that Sears, Roebuck & Co. could not sell the sewing machine to Mrs. Satterfield without first paying the license tax of $350 under the Act of March 15th, 1901, and he forbade the delivery of the sewing machine to Mrs. Satterfield until the license tax had been paid. He also claimed that the Norfolk and Western Railway Company would, by delivering the sewing machine to Mrs. Satterfield, be acting as the agent of Sears, Roebuck & Co., and thereby would be aiding and abetting Sears, Roebuck & Co. in the unlawful sale of the sewing machine in North Carolina, would be liable to prosecution for a misdemeanor, and would also be subject to the penalty of fifty dollars, to be recovered in a civil action under section 103 of the said Act of Assembly of North Carolina. The sheriff claiming that the machine was attachable and that he was entitled to hold the sewing machine until the license tax under section 52 of said Act of Assembly is paid, levied upon the machine for the license tax of $350.

PROCEEDINGS AND QUESTIONS RAISED IN THE COURT BELOW.

The case arising out of the claim and action of the defendant in error, was submitted without action under the Code of

North Carolina upon the facts agreed in the Superior Court of Person County, North Carolina, and that court decided, as will appear by its decision and judgment (see pages 11 and 12 of the Record):—

"1. That the sale of the sewing machine referred to in the case agreed took place in the State of North Carolina, and it follows that the vendor, Sears, Roebuck & Co., are liable for the license tax imposed by section 52, chapter 9, Public Laws of North Carolina, session 1901.

"2. That the license tax follows said sewing machine into the hands of the purchaser.

"3. That by payment of the purchase price to the express agent at Roxboro, North Carolina, and securing the bill of lading, the defendant, Mrs. O. L. Satterfield, did not acquire a good and unincumbered title to the said sewing machine.

"4. That any levy made, or threatened to be made, by the plaintiff, as Sheriff of Person County, upon said sewing machine for the license tax of said Sears, Roebuck & Co., is not in violation of the rights of the defendant Mrs. O. L. Satterfield as a purchaser of said sewing machine.

"5. That any levy made, or threatened to be made, by plaintiff upon said sewing machine while it is in the possession of the defendant Norfolk and Western Railway Company, for the license tax of said Sears, Roebuck & Co., is not, and would not be, an unlawful interference with interstate commerce, nor an unlawful interference with the rights, privileges, and duties of said Norfolk and Western Railway Company as a common carrier engaged in the business of interstate commerce.

"6. That if the defendant Norfolk and Western Railway Company should, upon the receipt of the carrier charges and surrender to it of the bill of lading, actually deliver said sewing machine to the defendant Mrs. O. L. Satterfield, it would thereby render itself liable to prosecution for a misdemeanor, and for the penalty provided in sections 101 and 103, chapter 9, Public Laws of 1901.

"7. That in making its deliveries of other machines in several places in this State through their agents, the railroads and express companies, in pursuance of the contract and

arrangement set forth in the statement of facts herein, Sears, Roebuck & Co. are indebted to the State in the sum of $350 for license tax.

"8. That the incomplete transaction as to the particular machine in controversy was of itself an 'attempt to sell,' and also makes the said Sears, Roebuck & Co. liable to the state for the said sum of $350 license tax, as set forth in the preceding section.

"9. That the particular machine in controversy having been levied upon before the presentation of the bill of lading, was subject to such levy for the payment of said indebtedness to the State, subject to the charges of the defendant railway company for carriage and storage as warehouseman.

"10. That the said railroads and express agents, in acting as the agents of Sears, Roebuck & Co., as set forth in the statement of facts, are subject to the fines and penalties provided in section 52, chapter 9, Public Laws of 1901."

"11. That said machines are subject to levy for said tax after delivery, and in the hands of the purchaser.

"It is therefore adjudged that Sears, Roebuck & Co. are indebted to the State of North Carolina in the sum of $350 for license tax in selling and attempting to sell sewing machines without a license, and that the levy by the plaintiff, sheriff, upon the machine in question, was and is lawful and valid, and that after paying the defendant railway company the freight and warehouse charges upon the same, he proceed to sell said sewing machine, and apply the proceeds to the payment of said tax. That upon payment to it by the plaintiff, sheriff, of said freight and warehouse charges, the said defendant railway company has no right to hold the said machine as against the plaintiff. That the defendant Norfolk and Western Railway Company has no legal right to deliver said sewing machine to its co-defendant, Mrs. O. L. Satterfield. That the defendants pay the costs of this controversy submitted without action to be taxed by the clerk of the Superior Court of Person County."

The Norfolk and Western Railway Company and Mrs. Satterfield having excepted to this decision and judgment (see

page 13 of the Record), appealed to the Supreme Court of North Carolina from the decision and judgment rendered in the Superior Court of Person County. The Supreme Court of North Carolina, by its opinion and judgment (see pages 15 and 16 of the Record), decided there was no error in the record and proceedings of the Superior Court, and affirmed the judgment, whereupon the Record and proceedings in the case were by writ of error brought to this court.

ASSIGNMENTS OF ERROR.

"*First.*—The said Supreme Court of North Carolina erred in deciding and holding in the opinion handed down, and in the judgment rendered by said court in this cause, that there is 'no error' in any of the several rulings, holdings, and judgment of the Superior Court of Person County, North Carolina, upon the facts agreed, set forth in the record in this cause, thereby fully sustaining and affirming in each and every particular the said rulings, holdings, and judgment of said Superior Court of Person County, and the plaintiffs in error assign the same as error, contending now, as heretofore, that the aforesaid rulings, holdings, and judgment of the said Superior Court of said Person County should have been wholly reversed by said Supreme Court of North Carolina.

"*Second.*—And for a more particular and specific assignment of errors the plaintiffs in error say there was error in the following particulars, and in each of the following rulings and holdings of the court upon the facts agreed set forth in the record: (1) 'That the sale of the sewing machine referred to in the case agreed took place in the State of North Carolina, and it follows that the vendors, Sears, Roebuck & Co., are liable for the license tax imposed by section 52, chapter 9, Public Laws of North Carolina, session 1901.' (2) 'That the license tax follows said sewing machine into the hands of the purchaser.' (3) 'That by payment of the purchase price to the express agent at Roxboro, North Carolina, and in securing

the bill of lading the defendant, Mrs. O. L. Satterfield, did not acquire a good and unincumbered title to said sewing machine.' (4) 'That any levy made or threatened to be made by the plaintiff as Sheriff of Person County upon said sewing machine for the license tax of said Sears, Roebuck & Co. is not in violation of the rights of the defendant, Mrs. O. L. Satterfield, as a purchaser of said sewing machine.' (5) 'That any levy made or threatened to be made by plaintiff upon said sewing machine, while it is in the possession of the defendant, The Norfolk & Western Railway Company, for the license tax of said Sears, Roebuck & Co. is not and would not be an unlawful interference with interstate commerce, nor an unlawful interference with the rights, privileges, and duties of said Norfolk and Western Railway Company as a common carrier engaged in business of interstate commerce.' (6) 'That if the defendant, The Norfolk and Western Railway Company, should, upon the receipt of the carrier charges and surrender to it of the bill of lading, actually deliver said sewing machine to the defendant, Mrs. O. L. Satterfield, it would thereby render itself liable to prosecution for a misdemeanor, and for the penalties provided in sections 101 and 103, chapter IX., Public Laws, 1901.' (7) 'That in making its deliveries of other machines in several places in this State, through their agents, the railroads and express companies, in pursuance of the contract and arrangement set forth in the statement of facts herein, Sears, Roebuck & Co. are indebted to the State in the sum of $350 for license tax.' (8) 'That the incomplete transaction as to the particular machine in controversy was of itself an "attempt to sell," and also makes the said Sears, Roebuck & Co. liable to the State for the said sum of $350 license tax, as set forth in the preceding section.' (9) 'That the particular machine in controversy having been levied upon before the presentation of the bill of lading was subject to such levy for the payment of said indebtedness to the State, subject to the charges of the defendant railway company for carriage and storage as warehousemen.' (10) 'That the said railroads and express agents in acting as the agents of Sears, Roebuck & Co. as set forth in the statement of facts, are subject to the fines

and penalties provided in section 52, chapter IX., Public Laws, 1901.' (11) 'That said machines are subject to levy for said tax after delivery, and in the hands of the purchaser.'

"*Third.*—And the judgment set forth in the record based upon and rendered by the court, pursuant to the foregoing erroneous rulings, holdings, and decisions of the said Superior Court of Person County, which was upon exceptions thereto and upon appeal therefrom sustained by said Supreme Court of North Carolina, was also erroneous.

"*Fourth.*—The said Supreme Court of North Carolina, in the opinion handed down in this cause, erred in deciding and holding that the section of the Revenue Act of North Carolina, chapter IX., section 52, Public Laws, 1901, referred to and quoted in the opinion, did apply to the transactions set forth in the facts agreed upon in this cause, and thereby, in effect, erroneously decided and held that the interstate commerce clause of the Constitution of the United States did not apply to said transaction, or to any other similar commercial transactions between Sears, Roebuck & Co. and their customers in North Carolina.

"*Fifth.*—The said Supreme Court of North Carolina, in the aforesaid opinion of said court, delivered by Mr. Justice Clark, misconceived the agreed facts as to whom and how the plaintiff in error, Mrs. O. L. Satterfield, paid the purchase price of the sewing machine, the court in said opinion assuming that 'payment was made to the common carrier (railway company) acting as agent for the shipper;' whereas the facts agreed set forth that the purchase price of the sewing machine was made to the express company, and her contention heretofore and still is that thereupon she acquired a good title to the sewing machine, which was not subject to be divested by any sheriff's levy thereon for tax claims against the vendors, Sears, Roebuck & Co., of Chicago."

All the assignments of error present in substance a single point for decision, and can, therefore, be conveniently argued together.

BRIEF.

The sale of a sewing machine by a citizen of Illinois to a citizen of North Carolina upon a mail order, the order being received in Illinois and the machine being sent from Illinois to North Carolina, C. O. D., is commerce among the several States which cannot be regulated or taxed by the States.

The power of Congress, under section 8, article I., of the Constitution, is exclusive to regulate such a transaction.

The right of importation of an article of commerce carries with it the right to sell the article imported, and the sale of an article of interstate commerce cannot be controlled by State legislation so long as the sale is a step in the conduct of interstate commerce. *A fortiori* where the sale is C. O. D., and consequently the completion of the sale by payment is a condition precedent to the delivery in the course of an interstate shipment, an attempt by a State to control or regulate or tax such sale is in conflict with the power vested in Congress.

It would be an intolerable burden on interstate commerce if every consignor doing business in one State and receiving an order therein, and in acceptance of such order making a shipment C. O. D. from that State to another of an article of commerce should be compelled to comply with the tax laws of the other State where the shipment is deliverable, and pay a license tax in that other State in order to secure the delivery of the interstate shipment. And this burden would be destructive of interstate commerce if every railroad or express company carrying such interstate shipment to the point of delivery should, as agent of such shipper, be subjected to fines and penalties for failure of the shipper in the one to comply with local tax laws of the other State.

Were it not that the Supreme Court of North Carolina has determined that such a license tax on C. O. D. interstate shipments is not in conflict with the power vested in Congress, it would not be considered necessary in submitting a brief on the part of the plaintiffs in error, to do more than call the attention of the court to the facts of the case.

At the threshhold the court will observe that the Act of North Carolina of 1901, upon which the judgment of the lower court was founded, is not a measure enacted under the police power, but is purely a revenue measure. A sewing machine is innocuous as an article of trade, and the only object of the Act requiring license for the sale of sewing machines was, as the title to the Act discloses, to raise revenue for the State of North Carolina.

Before we proceed to a discussion of those cases which it is thought require a reversal of the judgment of the Supreme Court of North Carolina, we will first allude briefly to the case relied upon by CLARK, J., in the opinion of the Supreme Court of North Carolina, which opinion appears at pages 15 and 16 of the transcript of the record. The case on which the decision was rested by the Supreme Court of North Carolina is the case of O'Neil *vs.* Vermont, 144 U. S., 323 (1892). But the Supreme Court of North Carolina has wholly misunderstood the decision of this court in the Vermont case.

The case of O'Neill *vs.* Vermont is not even an analogy to the case at bar for two reasons:—

(*a.*) Because in the O'Neil case a police measure was under consideration—the law of Vermont with regard to the sale of intoxicating liquors—while in the case at bar a mere revenue measure is under consideration. Many police measures of the States are valid, such as the inspection laws with regard to diseased cattle, &c., but no taxation of interstate commerce by the States has been permitted ;

(*b.*) Because the Federal question, under the commerce clause of the Constitution, was sought to be injected into the O'Neill case for the first time in this court, as is shown by the following extract from the opinion of Mr. Justice BLATCHFORD :—

"No point on the commerce clause of the Constitution of the United States was taken in the county court, in regard to the present case, or considered by the Supreme Court of Vermont."

And again he said :—

"No Federal question was presented for its decision as to this case, nor was the decision of the Federal question necessary to

the determination of this case, nor was any actually decided, nor does it appear that the judgment as rendered could not have been given without deciding one."

Nor have cases like Howe Machine Company *vs.* Gage, 100 U. S., 676, any application to the present case. In that case the Howe Machine Company manufactured sewing machines in Connecticut and had an agency at Nashville, in Davidson County, State of Tennessee. From the agency at Nashville, an agent was sent into Sumner County, Tennessee, to sell machines there. A tax was demanded from him for a peddler's license to make such sales, and the court held that the Act of Tennessee requiring a license in such a case was valid and not a regulation of commerce, the reason for the decision being that after the machines were sent to Nashville, Tennessee, from Bridgeport, Connecticut, and had, at the former place, "been mingled with and become a part of the property" of the State, they could not thereafter be distributed, as was attempted to be done, unless the sales agent had a license.

Another case along the same line is E[illegible]ert *vs.* Missouri, 156 U. S., 296. There the Singer Manufacturing Company employed Emert to go from place to place in Montgomery County, Missouri, with a horse and wagon, soliciting orders for the sale of Singer sewing machines, and having with him in the wagon a machine, which he in fact found a purchaser for and sold. He had no peddler's license, and was convicted under the statute requiring such a license for the sale of sewing machines.

The following from the opinion of Mr. Justice Gray will make plain the inapplicability of the decision to the case at bar:—

"Upon any construction, it is clear that the defendant was engaged in going from place to place within the State, without a license, soliciting orders for the sale of sewing machines, having with him in the wagon at least one of those machines, and offering that machine for sale to various persons at different places, and that he finally sold it, and delivered it to the pur-

chaser. The conclusion that such dealing made him a peddler, within the meaning of the statute of the State, and of the information on which he was convicted, presents of itself no constitutional question."

Later, he said again:—

"There is nothing in the case to show that he ever offered for sale any machine that he did not have with him at the time. His dealings were neither accompanied nor followed by any transfer of goods or of any order for their transfer, from one State to another; and were neither interstate commerce in themselves, nor were they in any way directly connected with such commerce. The only business or commerce in which he was engaged was internal and domestic; and so far as appears, the only goods in which he was dealing had become part of the mass of property within the State."

And if Osborne *vs.* Mobile, 16 Wall., 479, had been relied upon by our opponents, we should feel it necessary to do no more than quote the following from the opinion of this court delivered by Mr. Justice BRADLEY in 1888 in the case of Leloup *vs.* Mobile, 127 U. S., 640:—

"The State court relies upon the case of Osborne *vs.* Mobile, 83 U. S., 16 Wall., 479, which brought up for consideration an ordinance of the city requiring every express company, or railroad company, doing business in that city, and having a business extending beyond the limits of the State, to pay an annual license of $500; if the business was confined within the limits of the State, the license fee was only $100; if confined within the city, it was $50; subject in each case to a penalty for neglect or refusal to pay the charge. This court held that the ordinance was not unconstitutional. This was in December Term, 1872. In view of the course of decisions which have been made since that time, it is very certain that such an ordinance would now be regarded as repugnant to the power conferred upon Congress to regulate commerce among the several States."

It is submitted, therefore, that the decision of this court relied upon in the decision of the Supreme Court of North Caro-

lina has no application to the facts of this case, because in the case relied upon by the Supreme Court of North Carolina the articles of commerce had lost their interstate commercial characteristics and had become mingled with and part of the property of the State.

We now turn to the cases which, it is believed, rule the case at bar and require a reversal of the judgment of the Supreme Court of North Carolina.

In Leisy *vs.* Hardin, 135 U. S., 100, this court declared that persons of one State had the right to import beer into another State and sell it there in its original packages, and that only after the importation was completed, and the property imported was mingled with and become a part of the general property of the State by a sale of the importer to another person, could the State tax the property.

Mr Chief Justice FULLER said:—

"But whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with a power which, in this particular, has been exclusively vested in the general government, and is therefore void."

And again he said:—

"The plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit, but import into Iowa beer which they sell in original packages, as described. Under our decision in Bowman *vs.* Chicago & N. W. R. Co., *supra*, they had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that point of time, we hold that, in the absence of congressional permission to do so, the State had no power to interfere by seizure, or any other action, in prohibition of importation and sale by the foreign nonresident importer."

This decision rested upon the authority of Mr. Chief Justice MARSHALL in Brown *vs.* Maryland, 12 Wheaton, 419.

So also in Brennan *vs.* Titusville, 153 U. S., 289 (1894), a license tax imposed by Pennsylvania upon an agent of a citizen of another State for the privilege of selling his goods in the former State was held a direct burden on interstate commerce and beyond the power of the State. The State legislation requiring a license there, as here, was with the object of revenue and not a police measure.

In this case, as in the case at bar, the price was collected either by the railroad company or the express company in Pennsylvania, and the exact parallelism between the case at bar and the Titusville case will appear from the following extract from the agreed statement of facts in the Titusville case:—

"Upon receiving orders for pictures and picture frames, the agents of the said J. A. Shephard forwarded the same to him at Chicago, in the State of Illinois, where the goods were made, and from there shipped by said J. A. Shephard to the purchasers in Titusville, in the State of Pennsylvania, by railroad freight and express, and the price of said goods was collected and forwarded by the express companies and sometimes by the agents to said Shephard, at Chicago, in the State of Illinois. J. W. Brennan, the agent employed by J. A. Shephard, was engaged in conducting the business in the manner stated at the time of his arrest, May 25th, 1889."

And from the following extract from the agreed statement of facts in the case at bar (see page 7 of Record):—

"Mrs. O. L. Satterfield, who is a citizen and resident of said county of Person, in the said State of North Carolina, on or about the first day of November, 1901, sent an unqualified and specific order and contract on her part by mail to said Sears, Roebuck & Co., to said city of Chicago, Ill., for the sewing machine hereinafter mentioned, which said sewing machine was thereupon shipped as railroad freight by said Sears, Roebuck & Co., from said city of Chicago, Ill., to the defendant, Mrs. O. L. Satterfield, to Roxboro, in said county

of Person, North Carolina, said Sears, Roebuck & Co., on November 5th, 1901, procuring from the railroad carrier at and in said city of Chicago, Ill., a bill of lading in the usual form 'on order to notify,' for said sewing machine; * * * said bill of lading was sent by said Sears, Roebuck & Co., by express C. O. D. to the express agent at Roxboro, North Carolina, who received, as express agent, the purchase price of said sewing machine, and thereupon delivered the bill of lading to the defendant, Mrs. O. L. Satterfield; the express agent and the railway agent being one and the same person, to wit, A. P. Gilbert."

The following cases rule the case at bar:—

Bowman *vs.* Chicago & N. W. R. Co., 125 U. S., 465;
Asher *vs.* Texas, 128 U. S., 129;
Lyng *vs.* Michigan, 135 U. S., 161;
McCall *vs.* California, 136 U. S., 104;
Crutcher *vs.* Kentucky, 141 U. S., 47;
Stockard *vs.* Morgan, 185 U. S., 24.

If the case of Caldwell *vs.* North Carolina, decided January 12th, 1903, by this court were the only decision on the question, it would, standing alone, require the reversal of the judgment in the case at bar. The case is reported in 23 Supreme Court Reporter, 229. Mr. Justice Shiras there said:—

"But it certainly cannot be pretended that, if the pictures and the disconnected frames had been directly shipped to the purchasers, the license tax could have been imposed, either on the vendor out of the State or on the purchaser within the State. If the pictures and the frames intended for them had been shipped directly to the purchasers, whether in the same or separate packages, such a transaction would, beyond question, be interstate commerce beyond the reach of the taxing power of the State."

The fact is, under the agreed statement of facts in this case, that upon the receipt by Sears, Roebuck & Co., in Chicago, of the mail order sent them by Mrs. Satterfield, from North Carolina, and the acceptance of such order, there was a completed

executory contract for the sale of the machine and its shipment C. O. D. from Chicago to North Carolina. Everything after this in performance of the executory contract was commerce between the States up to the time when the machine arrived at Roxboro, North Carolina, was demanded by Mrs. Satterfield of the railway company, she having the bill of lading and having offered to pay the charges, and was ready for delivery to her. The fact that the price was not collectible until the machine was ready for delivery does not vary the nature of the transaction. The Supreme Court of North Carolina seems to think because the title to the machine remained in the sellers, therefore, the sale was in North Carolina and was not interstate commerce. Suppose it were true, for the sake of argument, that the title to the machine does remain in the seller until the payment and actual delivery in North Carolina, how can this fact render the last act of Sears, Roebuck & Co. in executing their contract *intra*-state commerce while every other act is *inter*-state commerce? Every act to execute the contract, including the loading of the machine in Chicago, the transportation of it by the several carriers in chain to Roxboro, North Carolina; the payment for it at Roxboro, and the delivery of it to Mrs. Satterfield, enters into and constitutes a part of the interstate commerce between Illinois and North Carolina, which is protected by the Federal Constitution and not subject to regulation or taxation by the State of North Carolina. Every one of these acts is necessary to the execution of the contract and the carrying on of interstate commerce between the two States.

In deciding questions of this kind the latest well-considered decisions of the courts of last resort of the several States have adopted the rules so firmly settled by the Supreme Court of the United States and the State courts have themselves struck down, without the necessity of an appeal to this court, those revenue or alleged police measures of the several States which, as in the case at bar, imposed a burden upon interstate commerce.

The decision of the Supreme Court of Iowa, on May 15th, 1902, in the case of State *vs.* Hanaphy, 90 N. W.,

601, is an illustration of the effect which is at last resulting from the plain principles so steadily adhered to in the decisions of similar cases by this court. In the Iowa case, a traveling salesman, whose principal was engaged in the sale of intoxicating liquors in Illinois, accepted an order for the sale of such liquors in Iowa, which order was sent to his principal in Illinois and the liquor was subsequently shipped by express C. O. D. from the principal to the buyer. The court will observe the exact parallelism of the facts in this case and the facts in the case at bar. The Supreme Court of Iowa declared the transaction to be interstate commerce and, accordingly, reversed a conviction under the Code of Iowa, section 2382, which forbade the sale of liquors without a license, neither the salesman nor his principal having such a license.

Speaking particularly to the point that the sale was in Iowa because the shipment was C. O. D. and the collection of the price made there, WEAVER, J., said:—

"The proposition strongly urged in argument by the State, that, the order being made for shipment of the liquors by express, to be paid for on delivery here, makes a sale within this State, and therefore avoids the claim that it was an act of interstate commerce, we think is not sound. The question whether it was an act of interstate commerce is not, we think, determined by the place where the title to the property passed to the purchaser. It is conceded that the subject of the sale was in Illinois and owned by a resident of that State, that the purchaser was a resident of this State, and that the order contemplated the shipment of the property from the seller in Illinois to the purchaser in Iowa. All these acts—the seeking of the customer by the agent, the soliciting and taking of the order, its transmission to the house in another State, the shipment made therein, the transportation and delivery to the purchaser in this State—all unite to make up interstate commerce."

So also in State *vs.* Hickox, 68 Pacific, 35, decided by the Supreme Court of Kansas in 1902.

With deference, it is submitted that the decision of the Supreme Court of North Carolina in the case at bar, if sustained,

would have the effect of annihilating one of the greatest and most important branches of interstate commerce, viz., the exchanging and bartering of goods on mail orders between the several States of the Union. The mail-order system which is here attacked enables persons distant from the great markets of the country to obtain goods at the lowest prices and enables the purchaser, as is proper and right, to withhold the price until the goods are ready for delivery to him by the carrier. As we have already said, it would be an intolerable burden on interstate commerce if every consignor, doing business in one State and receiving an order therein, and in acceptance of such order making a shipment C. O. D. from one State to another of an article of commerce should be compelled to comply with the tax laws of the other State where the shipment is deliverable, and pay a license tax in that other State in order to secure the delivery of the interstate shipment. And this burden would be destructive of interstate commerce if every railroad and express company carrying such interstate shipment to the point of delivery should, as agent of such shipper, be subjected to fines and penalties for failure of the shipper in the one to comply with the local tax laws in the other.

It is believed and confidently submitted that the judgment of the Supreme Court of North Carolina was erroneous and should be reversed.

Respectfully submitted,

THEODORE W. REATH,
WILLIAM A. GUTHRIE,
JOS. I. DORAN,
Of Counsel for Appellants, Norfolk and Western Railway Company et al.

April, 1903.

8028

Supreme Court of the United States

OCTOBER TERM, 1902. No. 734

Norfolk and Western Railway Company and Mrs. O. L. Satterfield, Plaintiff in Error,

vs.

John R. Sims, Sheriff of Person County.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

AN ACT TO RAISE REVENUE, RATIFIED MARCH 15th, 1901 (CHAPTER 9 OF PUBLIC LAWS OF NORTH CAROLINA, 1901, PAGE 118).

Filed as an Appendix with Brief for Plaintiff in Error. (See first page of Brief.)

(18,557.)

CHAPTER 9.

An Act to Raise Revenue.

The General Assembly of North Carolina do enact:

Schedule A.

Section 1. *Objects for which taxes are levied.*

That the taxes hereinafter designated are payable in the existing national currency, and shall be assessed and collected under the rules and regulations prescribed by law, and applied to the payment of the expenses of the State government, the appropriations to charitable and penal institutions, other specific appropriations made by law, and the interest on the four per centum consolidated debt of this State.

Taxes payable in national currency.

Application.

Sec. 2. *Poll tax.*

On each taxable poll or male between the ages of twenty-one and fifty years, except the poor and infirm whom the County Commissioners may declare and record fit subjects for exemption, there shall be annually levied and collected a tax of one dollar and twenty-nine cents, the proceeds of such tax to be devoted to purposes of education and the support of the poor, as may be prescribed by law, not inconsistent with the apportionment established by section two of Article five of the Constitution of this State.

Poll-tax, $1.29.

How applied.

Sec. 3. *Rate.*

There shall be levied and collected annually an *ad valorem* tax of twenty-one cents for State purposes, four cents for pensions, and eighteen cents for public schools, making forty-three cents on every one hundred dollars value of real and personal property in this State required to be listed in "An Act to provide for the assessment of property and collection of taxes," subject to exemptions made by law, and no city

Ad valorem tax 43 cents on real and personal property.

Subject to exemptions.

Municipal corporations, maximum levy.

or other municipal corporation shall have power to impose, levy or collect any greater sum on real and personal property than one per centum of the value thereof, except by special authority from the General Assembly.

SEC. 4. *Bank taxation.*

State taxes on shares paid to Treasurer.

The taxes imposed for State purposes upon the shares of stock in any bank, banking association or savings institution (whether State or national) in this State, shall be paid by the cashier of such bank, banking association or savings institution, directly to the State Treasurer, within thirty days after the first day of July of each year, and upon failure to pay the State Treasurer as aforesaid, he shall institute an action against the bank, banking association or savings institution to enforce the same in the county of Wake, or in the county in which the bank, banking association or savings institution is located, which action shall be prosecuted in the name of the State of North Carolina, on the relation of the Treasurer of the State, and which shall be tried at the return term of the Court: *Provided*, the complaint is filed ten days before the first day of such term, and shall have precedence over all other actions. The Board of Commissioners of the county in which such banks, banking associations or savings institutions are located shall assess against the value of shares of residents in that county and the tax imposed for school and county purposes, which shall be paid to the Sheriff of that county; and shall assess against the value of shares held by non-residents of this State in such bank, banking associations or savings institutions located in that county, the said tax imposed for school, county and municipal purposes, which shall be paid to the Sheriff of that county by the said bank. The value of such shares shall be determined as is hereinafter in this section provided. Every bank, banking association or savings institution (whether State or national) shall list its real estate in the county, city or town in which such real estate is located for the purposes of State, county and municipal taxation. Every such bank, banking association or savings institution shall, during the month of June, list annually with the State Auditor in the name and for its share-

When.

Proceeding on failure.

County Commissioners shall assess for county and school purposes.

Where real estate listed.

holders, all the shares of its capital stock, whether held by residents or non-residents, at its market value on the first day of June, or if it have no market value, then at its actual value on that day, from which market or actual value shall be deducted the assessed value of the real and personal property which such bank, banking association or savings institution shall have listed for taxation in the county or counties wherein such real and personal estate is located. The actual value of such shares, where such shares have no market value, shall be ascertained by adding together the capital stock, surplus and undivided profits and deducting therefrom the amount of real and personal property owned by said institution on which it pays tax and dividing the net amount by the number of shares in said institution. Insolvent debts due said institution may be deducted from the items of undivided profits or surplus if itemized, and sworn to and forwarded to the Auditor by the cashier of such institution. If the Auditor shall have reason to believe that the market or actual value as given is not its true value, he shall ascertain such true value by such examination and investigation as to him seems proper, and change the value as given in to such amount as he ascertains the true value to be, which action on the part of the Auditor may be reviewed by the Superor Court by an action brought against the State Auditor in his official capacity by the party aggrieved. But no action shall lie until all taxes, admitted by such aggrieved party to be due, shall have been paid or tendered. In listing the shares for State taxation, such bank, banking association or savings institution shall file with the Auditor of the State a statement showing the name and residence of each shareholder, the number of shares held by each and the taxable value of such shares as fixed by the provisions of this act, which statement shall be in writing and subscribed and sworn to by the president, cashier or some other officer of the bank. For the purpose of aiding the County Commissioners and other municipal officers in enforcing the law as to the listing of bank shares by the individual shareholders, for the purpose of county, school and municipal taxation, it shall be the duty of every bank or banking association or savings institution (whether

All shares of bank stock to be listed in June annually with Auditor, at market or actual value.

Property listed for county taxation deducted.

Actual value, how ascertained.

Deduction of insolvent debts.

Procedure for Auditor to ascertain actual value.

Reviewable by Superior Court.

No action lies till tax is paid or tendered.

Bank to file statement with Auditor.

Contents.

To be in writing, subscribed and sworn to.

Names of stockholders residing in any county to be furnished commissioners of said county; also number and value of shares.

State or national) to furnish to the Board of County Commissioners of each county wherein any of its shareholders reside, a statement showing the names of all its shareholders resident in such county, with the number of shares owned by each and the taxable value of such shares, ascertained from the statement hereinbefore required to be made by such bank, banking association or savings institution to the Auditor of the State. It shall also be the duty of the State

Auditor to certify to board of Commissioners names, etc., of resident shareholders.

Auditor to certify to the Board of County Commissioners of each county wherein any of said shareholders reside a a statement showing the names of all the shareholders resident in such county, with the number of shares owned by each, and the value of such shares as ascertained by the statement hereinbefore required to be made by such bank, banking association or savings institution to the Auditor of

Resident shareholders, where to list.

the State. The residents of this State who are shareholders in any bank, banking association or savings institution (whether State or national) shall list their respective shares in the county, city or town precinct or village where they reside for the purposes of county, school or municipal taxation.

Non-resident shareholders, where to list.

Non-residents of this State, who are shareholders in any bank, banking association or savings institution (whether State or national) located in this State, shall list their respective shares in the county, city, town, precinct or village in which such bank, banking association or savings institution is located, for the purposes of county, school, and municipal taxation. All shares, whether owned by residents or

When listed.

non-residents shall be listed at the time prescribed for listing taxes. The County Commissioners, List Takers and other

Powers of commissioners, list-takers and municipal officers to enforce listing.

county and municipal officers shall have the same power to enforce the listing of shares of stock in any such bank, banking association or savings institution, whether held by residents or non-residents, as they have for enforcing the listing of other personal property. The taxation of shares in any such bank, banking association or savings institution shall

Rate of taxation for bank stock.

not be at a greater rate than as assessed upon other moneyed capital in the hands of individual citizens of this State, whether such taxation is for State, county, school or municipal purposes.

SEC. 5. *Tax on Building and Loan Associations.*

Listing of stock in building and loan associations.

The secretary of each Building and Loan Association organized and conducting business in this State, shall list for taxation on the first Monday in June of each year the shares of stock of said association at their actual value, as shown by the books of said association. He shall deduct from such valuation the actual value of the shares upon which said association has made loans, and which have been pledged to such association as security therefor. But it is expressly provided that the secretary of each association shall show in detail, or by series on the tax list, the actual value of all shares, and also the actual value of shares upon which loans have been made, and which have been pledged to the association as security therefor. The secretary of such association shall pay to the State Treasurer by the first day of July of each year the State tax, and to the Sheriff or Tax Collector of each county in which such association is located, the county and school tax by the fifteenth day of September of each year. No other tax or assessment shall be charged or levied on said association or the shares therein.

Deductions allowed.

Taxes, when and to whom paid.

SEC. 6. *Reports from corporations.*

Officer of corporation, joint stock association, or limited partnership, to make annual report to Auditor.

Hereafter, except in the case of such corporations as are specially mentioned by name in other sections of this or the Machinery Act, and required to make statements in other forms, it shall be the duty of the president, chairman or treasurer of every corporation having capital stock, every joint stock association or limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this State, to make a report in writing to the Auditor in the month of June, 1901, and annually thereafter, stating specifically:

Contents.

First. Total authorized capital stock.
Second. Total authorized number of shares.
Third. Number of shares of stock issued.
Fourth. Par value of each share.
Fifth. Amount paid into the Treasury on each share.
Sixth. Amount of capital stock paid in.

Seventh. Amount of capital on which dividend was declared.

Eighth. Date of each dividend during said year, ending with the first day of June.

Ninth. Amount of each dividend during the year ending with the first Monday in said month.

Tenth. Amount of surplus.

Eleventh. Highest price of sales of stock between the first and fifteenth days of May.

Twelfth. Highest prices of sales of stock during the year aforesaid.

Thirteenth. Average price of sales of stock during the year.

Certain officers of corporation, etc., to estimate and appraise value of capital stock for taxation, when.

In every case any two of the following-named officers of such corporation, limited partnership or joint stock association, namely, the president, chairman, secretary or treasurer, after being duly sworn or affirmed to do and perform the same with fidelity and according to the best of their knowledge and belief, shall, between the first and fifteenth days of July of each year, estimate and appraise the capital stock of said company at its actual value in cash, on the first day of June after deducting therefrom the assessed value of all real and personal estate upon which the corporation pays tax, as indicated or measured by the amount of profit made, and either declared in dividends or carried into surplus or sinking fund, and when the same shall have been so truly estimated and appraised, they shall forthwith forward to the Auditor a certificate thereof, accompanied by a copy of their said oath or affirmation, signed by them and attested by a Magistrate, or other person duly qualified to administer the same: *Provided*, that if the Auditor and State Treasurer, or either of them, is not satisfied with the appraisement and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof based upon the facts contained in the report herein required, or upon any information within their possession, and to settle an account on the valuation so made by them for the taxes, penalties and interest due the State thereon, of which such settlement immediate notice shall be given to said corporation by said Au-

Method.

Sworn certificate of appraisement to be forwarded to Auditor.

Auditor or Treasurer dissatisfied with appraisement to make valuation.

Notice to corporation.

ditor and State Treasurer, with the right to the company dissatisfied with any settlement so made against it to appeal to the Superior Court in term time of the county in which such company has its principal place of business in this State, and thence to the Supreme Court of this State; but before such company shall be allowed to exercise their right of appeal, it shall, within twenty days after notice of such settlement, file with the Auditor and State Treasurer exceptions to the particulars to which it objects, and the grounds thereof, and said Auditor and State Treasurer shall hear said exceptions after ten days notice of such hearing given by said Auditor and State Treasurer to said company, and if they shall overrule any one of said exceptions, then such company, if it desires to appeal to said Superior Court, shall, within ten days thereafter, give notice to said Auditor and State Treasurer of such appeal to said Superior Court, and the said Auditor and State Treasurer shall thereupon transmit to said Superior Court a record of said settlement, with the exceptions of the company thereto, and all decisions thereon, and all papers and evidence considered in making said decision. The said cause shall be placed on the civil issue docket of said Superior Court, and shall have precedence of all other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of other civil causes. The cause shall be entitled State of North Carolina on the relation of Auditor and State Treasurer, against such company. Either party may appeal to the Supreme Court from the judgment of the Superior Court, under the same rules and regulations as are prescribed by law for other appeals, except that the State of North Carolina, if it shall appeal, shall not be required to give an undertaking or make any deposit to secure the costs of such appeal; and the Supreme Court may advance the cause on their docket so as to give the same a speedy hearing. And in the event of the neglect or refusal of the officers of any corporation, company, joint stock association or limited partnership, for a period of sixty days, to make the report and appraisement to the Auditor as herein provided, it shall be the duty of the Auditor and State Treasurer to estimate a valuation of the

Appeal.

Exceptions may be filed and heard before appeal.

If exception overruled, appeal lies.

Notice.

Record transmitted to Superior Court.

Procedure.

Cause, how entitled.

Appeal to Supreme Court.

Procedure.

Failure of corporation officers to make appraisement, procedure.

capital stock of such defaulting corporation, company, joint stock association or limited partnership, and settle an account for taxes, penalty and interest thereon, from which settlement an appeal may be made to the Superior Court of the county in which the corporation has its principal place of business. Corporations, limited partnerships or joint stock associations liable to tax on capital stock shall not be required to make any report or pay any further State tax on the mortgages, bonds, other securities and credits owned by them in their own right.

Certain corporations, etc., excepted from operation of this section.

SEC. 7. *No exemptions as to foreign corporations.*

Property of foreign corporations liable to taxation.

Nothing in this act shall be construed to exempt from taxation at its real value any property situate in this State belonging to any foreign corporation.

SEC. 8. *State Auditor to make certificate to Register of Deeds.*

Certificate of Auditor to Register of Deeds.

To what counties made.

Contents.

Corporation, etc., to pay taxes on certified valuation.

The State Auditor shall certify to the Register of Deeds of the county in which such corporation, joint, stock association, limited partnership or company whatsoever has its principal office or place of business, the total value of the stock of such corporation, joint association, limited partnership or company whatsoever as assessed for State taxation. The corporation, joint stock association, limited partnership or company whatsoever shall pay the county, township, town or city taxes upon the valuation so certified by the State Auditor.

SEC. 9. *Corporation taxes payable to State Treasurer.*

Corporation taxes payable to State Treasurer.

Annual tax on each $100 actual value of stock.

Treasurer of corporation to transmit amount to Secretary in 30 days.

Every corporation, joint stock association, limited partnership or company whatsoever from which a report is required under the sixth section hereof, shall be subject to and pay to the State Treasurer annually a tax as prescribed in section three upon each one hundred dollars of the actual value of its whole capital stock of all kinds, including common, special and preferred, as ascertained in the manner prescribed in section six, and it shall be the duty of the treasurer or other officer having charge of any such corporation, joint stock association or limited partnership upon which a tax is imposed,

to transmit the amount of the tax to the State Treasurer within thirty days from the date of the settlement of the account by the Auditor and State Treasurer: *Provided*, that for the purposes of this act, interests in limited partnerships or joint stock associations shall be deemed to be capital stock and taxable accordingly: *Provided, also*, that corporations, limited partnerships and joint stock associations, liable to tax on capital stock under this section, shall not be required to make any report or pay any further tax on mortgages, bonds, other securities and credits owned by them in their own right; but corporations, limited partnerships and joint stock associations, holding such securities as trustees, executors, administrators, guardians, or in any other manner, shall return and pay the tax imposed by this act upon all securities so held by them, as in the case of individuals. Individual stockholders in any corporation, joint stock association, limited partnership or company paying a tax on its capital stock under this section, shall not be required to pay any tax on said stock or list the same.

Interest in limited partnerships, capital stock.

Not to pay any other tax on such stock.

Individual stockholders not required to list and pay tax on stock.

SEC. 10. *Penalty for failure to furnish reports.*

If the said officers of any such limited partnership, joint stock association or corporation shall neglect or refuse to furnish the Auditor, on or before the thirty-first day of July of each and every year, with the report and appraisement of capital stock as aforesaid, as required by the sixth section of this act, it shall be the duty of the Auditor to add five per centum to the tax of said limited partnership, joint stock association or corporation for each and every year for which said report and appraisement were not furnished, which percentage shall be settled and collected with the said tax in the usual manner of settling and collecting such taxes; if the officers of any such limited partnership, joint stock association or corporation, or any of them, shall intentionally fail to comply with the sixth section of this act for three successive years, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of five hundred dollars and undergo imprisonment not exceeding one year, or both, or either, at the discretion of the Court.

Penalty for neglect or refusal to furnish Auditor with report, etc.

Penalty 5 per cent.

How collected.

Failure to comply with section 6 for 3 years a misdemeanor.

Penalty.

SEC. 11. *Tax exemptions repealed.*

Tax exemptions repealed.

Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of all such corporations shall be liable to taxation, except property belonging to the State and to municipal corporations, and property held for the benefit of churches, religious societies, charitable, educational, literary or benevolent institutions or orders, and also cemeteries: *Provided*, that no property whatever held or used for investment, speculation or rent shall be exempt.

All corporation property, etc., liable to taxation.

Exceptions as to State and municipal property, and property held for religious purposes.

Proviso.

INHERITANCE TAX.

SCHEDULE AA.

SEC. 12. *Rate of inheritance tax.*

Inheritance tax prescribed.

From and after the passage of this act all personal property of whatever kind and nature which shall pass by will or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State, or if the decedent was not a resident of this State at the time of his death, such property or any part thereof within this State, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled, in possession or expectancy, to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the State as follows, that is to say: Where the whole amount of said legacy or distributive share of personal property shall exceed in value two thousand dollars, and shall not exceed in value five thousand dollars, the tax shall be:

Legacies between value of $2,000 and $5,000.

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal

ancestor, brother or sister to the person who died possessed of such property as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property. Lineal issue, etc., to pay 75 cents on each $100.

Second. Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed as aforesaid, at the rate of one dollar and fifty cents for each and every hundred dollars of the clear value of such interest. Rate $1.50, when.

Third. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of the brother or sister of the father or mother of the person who died possessed, as aforesaid, at the rate of three dollars for each and every hundred dollars of the clear value of such interest. Rate $3 on each $100, when.

Fourth. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the person who died possessed, as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest. Rate $4, when.

Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: *Provided*, that all legacies or property passing by will, or by the laws of this State, to husband or wife of the person who died possessed, as aforesaid, or for religious, charitable or educational purposes, shall be exempt from tax or duty. Where the amount or value of said property shall exceed the sum of five thousand dollars, but shall not exceed the sum or value of ten thousand dollars, the rates of tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of ten thousand dollars, but shall not exceed the sum of twenty-five thousand dollars, such Rate $5, when. Proviso as to devises, etc., for religious, charitable and educational purposes. Tax rate between $5,000 and $10,000. Rate between $10,000 and $25,000.

Between $25,000 and $50,000.

rates of tax shall be multiplied by two; and where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum of fifty thousand dollars, such rates of tax shall be multiplied by two and one-half; and where the amount or value of said property

Rate when value exceeds $50.00.

shall exceed the sum of fifty thousand dollars, such rates of tax shall be multiplied by three.

SEC. 13. *When all heirs, legatees, etc., are discharged from liability.*

Liability of heirs, etc., for taxes, how discharged.

All heirs, legatees, devisee, administrators, executors and trustees shall only be discharged from liability for the amount of such taxes, the settlement of which they may be charged with, by paying the same for the use aforesaid, as hereinafter provided.

Penalty for non-payment in two years.

SEC. 14. That if said tax is not paid at the end of two years after the death of decedent, six per cent. per annum shall be charged thereon until same is paid.

SEC. 15. *Executor, etc., shall deduct tax.*

Duty of executor, etc., to pay tax, and deduct on settlement of estate.

The executor or administrator or other trustee, paying any legacy or share in the distribution of any estate subject to said tax, shall deduct therefrom at the rate of tax prescribed,

What to do in case legacy or shares in estate does not consist in money.

or if the legacy or share in the estate be not money, he shall demand payment of a sum to be computed at the same rates upon the appraised value thereof for the use of the State; and

Executor, etc., not compelled to pay or deliver specific legacy until legatee settles taxes.

no executor or administrator shall be compelled to pay or deliver any specific legacy, or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect

Legatee refusing or neglecting to pay taxes, property may be sold.

or refusal on the part of the said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator

Balance in hands of executor, etc., how distributed.

at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law, and every sum of money retained by any executor or admin-

istrator, or paid into his hands on account of any legacy or distributive share, for the use of the State, shall be paid by him to the proper officer without delay.

SEC. 16. *Legacy for life, etc., tax to be retained upon the whole amount.*

Tax on legacy for life to be retained on whole amount.

If the legacy subject to said tax be given to any person for life, or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the Court having jurisdiction of the accounts of executors and administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require.

SEC. 17. *Legacy charged upon real estate, heir or devisee to deduct and pay to executor, etc.*

Legacy charged upon real estate, heir or devisee to deduct and pay to executor, etc.

Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee shall deduct therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator, and the same shall remain a charge upon such real estate until paid; and in default thereof, the same shall be enforced by the decree of the Court in the same manner as the payment of such legacy may be enforced: *Provided*, that all taxes imposed by this act shall be a lien upon the personal property of the estate on which the tax is imposed, or upon the proceeds arising from the sale of such property, from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the State.

Proviso as to lien of taxes.

SEC. 18. *Executor or administrator to take duplicate receipts from the Clerk of the Court.*

Executor, administrator, etc., to take duplicate receipts from Clerk.

It shall be the duty of any executor or administrator, on the payment of said tax, to take duplicate receipts from the Clerk of the Court, one of which shall be forwarded forthwith to

Duty of Auditor to charge Clerk.

the Auditor of the State, whose duty it shall be to charge the Clerk receiving the money with the amount, and seal with the seal of his office and countersign the receipt and transmit it to the executor or administrator, whereupon, it shall be a proper voucher in the settlement of the estate, but in no event shall an executor or administrator be entitled to a credit in his account by the Clerk, unless the receipt is so sealed and countersigned by the Auditor of the State.

When a proper voucher in hands of executor, etc.

SEC. 19. *Foreign executor or administrator, transferring stock shall pay the tax on such transfer.*

Foreign executor or administrator transferring stock to pay tax.

Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or bonds in this State standing in the name of the decedent, or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof to the Clerk of the Court of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

To whom paid.

SEC. 20. *Proportion of tax to be repaid upon certain conditions.*

Proportion of tax to be repaid upon certain conditions.

Whenever debts shall be proven against the estate of a decedent, after the distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the State Treasury, or shall be refunded by the State Treasurer if it has been so paid in.

SEC. 21. *Appraiser to be appointed by the Clerk, etc.*

Clerk of Superior Court to appoint appraiser.

It shall be the duty of the Clerk of the Court of the county in which letters testamentary or of administration are granted, to appoint an appraiser, as often as, and whenever occasion may require, to fix the valuation of estates which are or shall be subject to inheritance tax, and it shall be the duty of said appraiser to make a fair and conscionable ap-

Duty of appraiser.

praisement of such estates; and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estate the inheritance tax shall be immediately payable out of the estate at the rate of such valuation: *Provided*, that any person or persons not satisfied with said appraisement shall have the right to appeal within sixty days to the Court of the proper county on paying or giving security to pay all costs, together with whatever tax shall be fixed by said Court, and upon such appeal said Court shall have jurisdiction to determine all questions of valuation of the liability of the appraised estate for such tax, subject to the right of appeal to the Supreme Court, as in other cases. The compensation of appraisers appointed under this act shall be at the rate of three dollars per day for each day necessarily employed in making the appraisement, together with such necessary traveling expenses as may be incurred, a statement of which shall be properly itemized and sworn to, subject to the final approval of the Auditor of State before payment is made by the Clerk of the Court.

Proviso as to right of appeal.

Compensation of appraiser.

SEC. 22. *Misdemeanor for appraiser to take fee or reward from executor or administrator.*

It shall be a misdemeanor for any appraiser appointed by the Clerk to make any appraisement in behalf of the State, to take any fee or reward from any executor or administrator, legatee, next of kin or heir of any decedent, and for any such offence the Clerk of the Court shall dismiss him from such service, and upon conviction in the Superior Court, he shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year, or both, or either, at the discretion of the Court.

Appraiser taking fee or reward from executor, etc., guilty of a misdemeanor.

Penalty, dismissal and fine or imprisonment.

SEC. 23. *Clerk to enter returns made by appraisers, etc.*

It shall be the duty of the Clerk of the Court to enter in a book to be provided at the expense of the State, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers under this act, opening an ac-

Duty of Clerk to keep a record of returns made by appraisers, etc.

How kept.

count in favor of the State against the decedent's estate; and the Clerk may give certificates of payment of such tax from such record; and it shall be the duty of the Clerk of the Court to transmit to the Auditor of State, on the first Monday of each month, a statement of all returns made by appraisers during the preceding month, giving the name of the estate and the clear valuation thereof, subject to the foregoing tax, and the amount of the tax, which statement shall be entered by the Auditor in a book to be kept by him for that purpose. And whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the Clerk of the Court to apply to the Court by bill or petition to enforce the payment of the same; whereupon said Court having caused due notice to be given to the owner or owners of the estate charged with the tax, and to such other person or persons as may be interested, shall proceed according to equity to make such decrees or orders for the payment of the said tax out of such estates as shall be just and proper.

Statement to make to Auditor monthly.

Auditor to record statement.

Tax unpaid for one year, duty of Clerk.

SEC. 24. *Court may order executor, etc., to file account, etc.*

If the Clerk of the Court shall discover that said tax has not been paid according to law, the Court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account, or to issue a citation to the executors, administrators, legatees or heirs, citing them to appear on a day certain and show cause why the said tax should not be paid, and when personal service can not be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county; and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax, interest and costs. And it shall be the duty of the Auditor of State to employ an attorney of the proper county to sue for the recovery and amount of such tax, and the Auditor is authorized and empowered, in settlement of accounts of any Clerk, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of said tax.

Court may order executor, etc., to file accounts.

Notice, how given when personal service can not be had.

Auditor to employ attorney.

SEC. 25. *Clerk to be agent of the State for collection of said tax.*

Clerks of Superior Courts agents of State to collect tax.

The Clerks of the Courts of the several counties of this State shall be the agents of the State for the collection of the said tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed to retain for their own use such percentage as may be allowed by the Auditor, not exceeding three per centum on all taxes paid and accounted for.

Compensation.

SEC. 26. *Clerk to be liable on his official bond.*

Clerk liable on official bond.

The said Clerks of the Courts shall be liable on their official bonds to the State for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received.

SEC. 27. *Clerk to make returns and payment to the State Treasurer.*

Clerks to make returns and payment of taxes to State Treasurer monthly.

It shall be the duty of the Clerk of the Court of each county to make returns and payment to the State Treasurer of the taxes under this act which he shall have received, stating for what estate paid, on the first Monday of each month; and for all taxes collected by him and not paid over to the State Treasurer within ten days after said monthly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.

Penalty for not paying.

INCOME TAX.

SEC. 28. *Tax-payer to show his income on list.*

Taxpayer to list income.

The tax-payer shall show on his list the source of his income, and the Tax-Lister shall see that specific answers are made to each question in regard to income.

SEC. 29. *What question blank shall contain in regard to income.*

Questions in regard to income.

The blank for listing taxes shall contain the following questions in regard to income:

What was your gross income during the twelve months ending June first:

(1) From State or United States bonds.....$
(2) From salary and fees.....
(3) From annuities. .....
(4) From trade or profession.....
(5) From any other source except from property taxed .....

Subject to the following deduction:
From exemption $1,000 00

Income for taxation.....$

Tax-lister liable for not requiring specific answer to each question.

Should the tax-lister fail to require a specific answer to each question in regard to income, he shall be subject to a penalty of five dollars for each question unanswered, and the Board of County Commissioners shall deduct the amount of the penalty from the compensation due the tax-lister, or the amount may be sued for by any individual, one-half of the amount recovered to go to the person bringing the suit and one-half to the State.

Penalty, how collected.

SEC. 30. *Rate of income tax.*

Rate of income tax

On all gross incomes as provided in the preceding section hereof a tax shall be levied as follows:

On the excess over the amount legally exempted one per cent.

Not to be levied on incomes from property already taxed, nor incomes less than $1,000.

The above tax shall not be levied upon the income derived from property already taxed, nor upon incomes less than one thousand dollars. The incomes subject to the above tax are those derived from property not taxed: from salaries and fees, public or private; from annuities; from trades or professions; and from any other sources the incomes from which are not specifically exempted from taxation by law.

On what incomes levied.

No city, etc., to levy inheritance or income tax.

SEC. 31. No city, town, township or county shall levy any inheritance or income tax.

Schedule B.

Sec. 32. *Defining taxes under this schedule.*

Taxes in this schedule shall be imposed as license tax for the privilege of carrying on the business or doing the act named, and nothing in this act contained shall be construed to relieve any person or corporation from the payment of tax as required in the preceding schedule. The license issued under this schedule shall be for twelve months, and shall expire on the thirty-first day of May of each year: *Provided*, that persons becoming liable for any license payable to the State Treasurer at any time after May thirty-first of any year, shall pay the *pro rata* part of the year ending May thirty-first of the year counting from the first day of the month in which said license becomes due, unless otherwise specially provided in any section imposing a tax.

Taxes under Schedule B defined.

License tax.

Not to be construed to relieve any person from taxes required in previous schedule.

Licenses to be for twelve months.

Proviso.

Sec. 33. *Theaters.*

On each room or hall, used as a theater or opera house where public exhibitions or performances are given for profit, in a city or town having more than ten thousand inhabitants, two hundred dollars per annum; less than ten thousand and over five thousand inhabitants, one hundred dollars per annum; less than five thousand and over two thousand five hundred inhabitants, fifty dollars per annum; less than two thousand five hundred and over one thousand inhabitants, twenty-five dollars per annum; less than one thousand inhabitants, fifteen dollars per annum; the license under this section shall be issued by the Sheriff and shall be conspicuously posted in the entrance or vestibule of the room or hall, and said room or hall shall not be liable to any other license tax by the county, but the said tax shall be divided and one-half paid to the State, and one-half to the county. Companies or individuals when performing or exhibiting in rooms or halls licensed under this section shall not be required to pay any other county or State license tax.

Theatres.

Town of more than 10,000 inhabitants, $200.

Less than 10,000 and over 5,000, $100.

Less than 5,000 and over 2,500, $50.

Less than 2,500 and over 1,000, $25.

Less than 1,000 inhabitants, $15.

License issued by sheriff.

Not liable to other taxes.

Companies performing not required to pay another State and county tax.

SEC. 34. *Traveling theatrical companies.*

Traveling theatrical companies performing in hall not licensed to pay $10 on each exhibition. Owner of hall liable for tax.

On every traveling theatrical company giving exhibitions or performances in any hall not licensed as provided in the preceding section, whether on account of municipal ownership, or for any other reason, ten dollars on each exhibition or performance, and the owner of the hall shall be responsible for said tax.

SEC. 35. *Circuses, menageries, etc.*

Circuses, menageries, etc., $200.

On every exhibition of a circus, or circus and menagerie combined, to both of which only one admission fee is charged, for each day or part of a day, two hundred dollars, and on each side show, fifty dollars. On every other show given under canvas or otherwise, in which animals are exhibited, or trapeze or juggling performances are given, for each day or part of a day, fifty dollars, whether free or otherwise. Every county shall have the power to fix the county tax on all circuses, shows, menageries or entertainments, mentioned in this section at such amount as the County Commissioners may deem proper, not to exceed one thousand dollars: *Provided*, the same shall not be less than the State tax provided in this section.

Side-show, $50.

Other shows, $50.

Counties have power to fix county tax.

Proviso.

SEC. 36. *Certain entertainments exempt from license tax.*

Entertainments exempt from tax.

All exhibitions or entertainments given for the sole benefit of religious, charitable or educational objects shall be exempt from taxation.

SEC. 37. *Attorneys, Physicians and Dentists.*

Attorneys, physicians and dentists, $5.00.

On each and every practicing lawyer, practicing physician, dentist, oculist, or optician, the sum of five dollars: *Provided*, that no city, town or county shall levy any additional license tax on lawyers, physicians, dentists, oculists or opticians.

Proviso.

SEC. 38. *Auctioneers.*

Auctioneers.

On every auctioneer of goods, wares, or merchandise, and tobacco auctioneers, whether by ascending or descending bids

at public outcry, who make a charge for service, an annual license tax as follows: In cities or towns of fifteen thousand inhabitants or over, twenty dollars; in cities or towns with more than ten and less than fifteen thousand inhabitants, fifteen dollars; in cities or towns with more than five and less than ten thousand inhabitants, ten dollars; in towns with less than five thousand inhabitants, and more than one thousand, five dollars. Annual tax according to population of towns.

SEC. 39. *Real Estate and Rent Collecting Agents.*

On every individual or firm, or his or their agents, acting as agent for collecting rents or as agent in buying and selling real estate of any and every description, for compensation, and all persons who draw deeds and contracts or assume to attend to other legal business for compensation, an annual license tax the same as levied upon auctioneers under section thirty-eight. Real estate and rent-collecting agents same tax as levied on auctioneers.

SEC. 40. *Dealers in fresh meats.*

On every individual or firm engaged in the business of buying and selling fresh meats from offices, stores, stalls, or vehicles, an annual license tax for each place of business, whether the same is conducted in connection with any other business or not, the same as levied upon auctioneers under section thirty-eight: *Provided*, that nothing in this section shall apply to farmers vending their own products, and without a regular place of business. Dealers in fresh meats tax same as levied on auctioneers. Proviso.

SEC. 41. *Wood and Coal Dealers.*

On every individual, firm, or association of persons engaged in and conducting the business of selling coal and wood at wholesale or retail, an annual license tax the same as levied upon auctioneers under section thirty-eight: *Provided*, that this license tax shall not apply to persons selling less than one hundred cords of woods a year, or to persons who cut and haul their own timber. Wood and coal dealers. Proviso.

SEC. 42. *Photographers, Lumber Dealers, Undertakers, etc.*

Photographers, lumber dealers, undertakers, laundries, etc.

An annual license tax of one-half the amount levied upon auctioneers under section thirty-eight, shall be collected from every person or firm carrying on or conducting either of the following trades, business or professions: On every photographer; on every laundry (except steam laundry); on every lumber dealer; on every undertaker. An annual license tax, the same as levied upon auctioneers under section thirty-eight shall be collected from every steam laundry. An annual license tax of twenty-five dollars shall be collected from the following: For collecting accounts, bills, notes, or money from one person in favor of another, as a regularly organized collection agency; on every dealer in second-hand clothing.

Steam Laundry.

Collecting agents and agencies.

SEC. 43. *Junk dealers.*

Junk dealers.

On every junk dealer an annual license tax the same as levied upon auctioneers under section thirty-eight.

SEC. 44. *Horse dealers.*

Horse dealers.

On all persons, firms or corporations who buy and sell horses or mules as a business for profit, an annual tax of twenty-five dollars to the State and no tax to the county.

SEC. 45. *Peddlers of clocks, stoves and ranges.*

Peddlers of clocks, stoves and ranges.

On every itinerant person or company peddling clocks, stoves or ranges, fifty dollars per annum for each county in which he or they may peddle the same. And on every itinerant person or company peddling eye-glasses or spectacles, ten dollars. The license to be issued by the Sheriff of the county who shall collect said tax and pay the same to the State Treasurer. No other tax shall be levied by any town or county.

License issued by sheriff.

SEC. 46. *Bicycle dealers.*

Bicycle dealers.

On every individual or firm or his or their agents, engaged in the business of buying and selling bicycles or bicycle supplies and fixtures, whether such business is conducted in con-

nection with other business or not, an annual license tax as follows: In cities or towns of twelve thousand inhabitants or over, ten dollars; in cities or towns of less than twelve thousand inhabitants, five dollars: *Provided*, that nothing in this section shall apply to any individual or firm conducting the exclusive business of repairing bicycles. Amount of taxes.

SEC. 47. *Dealers in theatre tickets.*

On all dealers in theatre tickets, an annual license tax of five dollars: *Provided*, that nothing in this section shall apply to any dealer in theatre tickets in towns of less than two thousand inhabitants. Dealers in theatre tickets.

SEC. 48. *Merchandise brokers.*

On every commission merchant, broker or dealer, buying or selling goods or merchandise on commission, ten dollars per annum. If the merchant, broker or dealer also buys and sells goods and merchandise on his own account, and the annual license tax levied upon him under the section herein entitled, "Merchants' Tax," is more than ten dollars, he shall not be liable for the tax imposed by this section. Commission merchants, brokers, etc. Not to be listed, when.

SEC. 49. *Ship brokers.*

On every person engaged in the business of managing the affairs occurring between the owners of vessels and the shippers or consignees of the freight which they carry, usually known as "ship broker," an annual license tax of twenty dollars. Ship brokers.

SEC. 50. *Pawnbrokers.*

No person shall, without a license authorized by law, engage in the business of lending money or other things for profit for or on account of specific articles of personal property deposited with the lender in pledge. Any person who shall in any manner lend or advance money as aforesaid on the pledge and possession of such personal property, shall be held to be a pawnbroker. Any person making a pledge of property as aforesaid, for money loaned or advanced who No person to lend money as pawnbrokers without license. Pawnbroker defined. Persons pawning property to lose right of redemption, when.

shall not pay or return the money so loaned or advanced within sixty days after the date fixed for the return or payment of the same, shall forfeit his right to redeem the property pledged. After such person shall have forfeited his right to redeem the property, the pawnbroker may cause said property to be sold at public auction by any licensed auctioneer. The expenses attending the sale shall be paid out of the proceeds of sale, and if any surplus arise from the sale after satisfying the money advanced, with the interest and costs which have accrued, such surplus shall be paid over to the person depositing the property as aforesaid. Any person acting as pawnbroker without a license, shall pay a fine of not less than fifty nor more than five hundred dollars. A pawnbroker shall pay for the privilege of transacting business an annual license tax of one hundred dollars.

SEC. 51. *Livery stables.*

On every person, firm or corporation who keeps horses or mules to hire or let, with or without vehicle, fifty cents for each six months for every horse or mule kept for that purpose. Such person shall, on the first day of January and July of each year, furnish to the Register of Deeds a sworn statement of the number of horses or mules so kept at any time during the preceding six months, the taxes to be collected by the Sheriff or tax collector.

SEC. 52. *Sewing machines.*

Every manufacturer of sewing machines, and every person or persons or corporation, engaged in the business of selling the same in this State, shall, before selling or offering for sale any such machine, pay to the State Treasurer a tax of three hundred and fifty dollars and obtain a license, which shall operate for one year from the date of issue, and all licenses, provided for in this section, shall be countersigned by the State Auditor and shall not be valid unless so countersigned. A separate tax shall be paid on every class or style of machine having a separate and distinct name offered for

sale in this State, which name shall be furnished in the written application for license to the State Treasurer and inserted in the license. The State Treasurer shall, upon the written application of any one who has obtained license as provided in this section, and the payment of a fee of fifty cents, issue a certified duplicate copy of said license to any agent designated by the license. Every one to whom license shall be issued as provided in this section shall have power to employ an unlimited number of agents to sell the machines named in his license. The parties obtaining license issued under this section, shall not be taxed for license fee by any county, city or town government. Any person required to take out license under this section who shall sell or attempt to sell any machine without having obtained license, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined one hundred dollars, or imprisoned not exceeding thirty days, the fine to be paid into the State Treasury as other taxes. In addition to the said fine or imprisonment, any person violating the provisions of this section shall pay a penalty to the officer making the arrest, of two hundred dollars, one hundred thereof to be paid into the State Treasury as other taxes, and one hundred dollars to the officer making the arrest.

Name of mach to be in applic tion and licen

License paid and obtained certified, duplicate cop to be furnish agents.

Parties obtain license herea not to be taxe for county, ci or town licen

Violation of t section a misdemeanor

Penalty for violation.

Additional penalty to be paid officer m ing arrest.

How applied.

It shall be the duty of all county, town and township bonded officers to prosecute for penalties under this section. This section shall not apply to merchants who buy and sell sewing machines on which a license tax has been paid as hereinbefore provided, and who keep the said machines in their general stock of merchandise, and sell and deliver them at their place of business. It shall be the duty of the State Treasurer to have this section printed on the face of each license issued under this act for the information and protection of parties to whom the same may be issued: *Provided*, that any second-hand sewing machine, traded for, or taken in exchange as part payment for a new sewing machine, may be sold free of tax by any party to whom licenses have been issued to sell sewing machines.

Duty of offic prosecute for penalties und this section.

Not to apply merchants b and selling machines wh tax has been and machine are kept in st etc.

Treasurer to this section printed on fa of license.

Proviso as to second-hand machines.

her reno-
rs, license
$10 for each
ty
ted in.

SEC. 53. *Feather renovators.*

On every individual or firm or association of persons, or his or their agents, engaged in the business of renovating feathers, a license tax as follows: Ten dollars for each county in which such business may be solicited or conducted.

lers, who
ed to be.

ler's
e taxes.

n itinerant
man
ing or
ting goods,
or sale $100
ch county.

y person
oned in this
n to apply
unty
missioners
ense.
tion of
missioners.

tions.

receiving
to exhibit
o officers
mand.

to exhibit
mand, party
e arrested.

SEC. 54. *Peddlers.*

Any person who shall carry from place to place any goods, wares or merchandise and offers to sell or barter the same, or actually sells or barters the same, shall be deemed to be a peddler, and shall pay a license tax as follows: Each peddler on foot, ten dollars for each county; each peddler with horse, ox, or mule, with or without vehicle, or with a vehicle propelled by any other power, thirty dollars for every county. Every itinerant salesman who shall expose for sale, either on the street or in a house, rented temporarily for that purpose, goods, wares, or merchandise, shall pay a tax of one hundred dollars in each county in which he shall carry on such business, whether as principal or as agent for any other person. Every person mentioned in this section, shall apply in advance to the Board of County Commissioners of the county in which he proposes to peddle or sell for a license, and the Board of County Commissioners may, in their discretion, issue the license upon the payment of the tax to the Sheriff, which shall expire at the end of twelve months from its da . This section shall not apply to those who sell or offer for sale ice, fuel, fish, vegetables, fruits or any articles of the farm or dairy, or articles of their own individual manufacture, except drugs, medicines and nostrums. It shall be the duty of every person receiving a license under this section to exhibit the same upon demand of any constable or justice of the peace of any township in which he may vend or offer to vend any of the articles taxed in this section, and upon failure to do so, every such person shall be presumed to be peddling without license, and shall be arrested and held to answer the charge; and if after arrest he shall produce his license, he shall be discharged upon the payment of all costs; and it shall be the duty of any constable or justice of the

discharged
duction of
.

peace to arrest all persons peddling without license required by law and hold them to answer the charge of misdemeanor, and upon conviction they shall be punished as provided in section one hundred and three (103) of this act, and any person who shall transfer or assign a license shall be subject to like punishment. The Board of County Commissioners shall have power, at their discretion, to exempt from tax under this section any poor and infirm person. Any person carrying a wagon, cart or buggy for the purpose of exhibiting or delivering any wares or merchandise, shall be considered a peddler: *Provided*, that this section shall not apply to persons or their agents engaged in exchanging woolen goods for wool: *Provided further*, that this section shall not apply to drummers selling by wholesale.

Duty of cons to arrest per peddling wit license.

Party convic how punish

Penalty for t ferring licens

Power of Co Commissione exempt from license.

Who consid peddler.

Proviso.

Not applicab drummers.

SEC. 55. *Mercantile agencies.*

On every mercantile agency or association having an office in this State which has for its object the rating of the commercial *status* of persons, firms or corporations, the sum of two hundred dollars, to be paid by the principal office in the State to the State Treasurer, and no city, town or county shall levy any additional license tax. Any person representing any mercantile agency which has failed to pay a license tax as above provided shall be guilty of a misdemeanor.

Mercantile agencies lice tax $200.

How paid.

No additiona

Misdemeano represent ag that has fail pay tax.

SEC. 56. *Gypsies or fortune-tellers.*

Every company of Gypsies, or strolling bands of persons living in wagons or tents, or otherwise who trade horses or receive reward for pretending to tell fortunes, one hundred and fifty dollars in each county in which they offer to trade horses or practice any of their craft, recoverable out of any property belonging to any of the company; but nothing herein contained shall be so construed as to exempt them from indictment or penalties imposed by law.

Gypsies and other strollin bands, tradi horses, or pr tending to t fortunes, $15 each county.

How collect

Not exempt indictment,

SEC. 57. *Lightning-rod agents.*

On every person or company who puts up lightning-rods, twenty dollars annually for each county in which he carries on business or sells lightning-rods.

Lightning-r agents, tax each county

SEC. 58. *Hotels.*

...els
...rging less
... $2 a day, 25
... on each
...
...rging $2 or
... per day, 50
... on each
...
...ptions.

On each hotel charging for transient custom less than two dollars per day, an annual tax of twenty-five cents for each and every room; hotels charging two dollars per day or more, fifty cents per room. The office, dining-room, one parlor, the kitchen and two other rooms shall not be counted when calculating the number of rooms in the hotel.

SEC. 59. *Cotton compresses.*

...nual tax on
...them
...mpresses, $50.

Every individual, firm, corporation or association of persons engaged in the business of compressing cotton shall pay an annual license tax of fifty dollars for each compress owned and operated.

SEC. 60. *Billiard and pool tables, bowling alleys.*

...lliard tables,
..., in connection
...h saloon, $50
...each table.

...thers $20
...ch.

On each billiard or pool table, bowling alley or alley of like kind kept for public use, if in connection with any place where liquor is sold, fifty dollars, whether kept under the same roof or otherwise; and on all other billiard or pool tables, bowling alleys or alleys of like kind, kept for public use, twenty dollars each.

SEC. 61. *Gift enterprise; prize photographs; slot machines.*

...enterprises,
...offering
..., etc., tax $2

...rant dealer
...ize photo-
..., etc., $100
...each county.
...machines,
...returns are
...ato, $10.
...in this
...to whom
...

...unts of taxes
...construed as
...license or
...ving from
...city for
...tion of law.
...ge to be
...picuously
...ted on
...chine.

On any gift enterprise, or any person or establishment offering any article for sale and proposing to present purchasers with any gift or prize as an inducement to purchase, twenty dollars; on every itinerant dealer in prize photographs, or prizes of any kind, one hundred dollars in each county in which the business is conducted; on each slot machine where the return is certain to be of a value equal to the amount deposited, but may be of a greater value, ten dollars. The taxes in this section shall be paid to the Sheriff or tax collector of the county, but shall not be construed as giving license or relieving such persons or establishments from any penalties incurred by violation of the law. Each slot machine taxed under this section shall have the Sheriff's license conspicuously posted upon it: *Provided*, that this section shall not apply

to a merchant or manufacturer who offers to present to purchasers or customers a gift of a certain value or who makes or allows a rebate on a sale, as an inducement to purchase. It shall be unlawful for any firm, corporation or person to operate a slot machine when the return is uncertain and sometimes nothing; and any one violating this provision shall be guilty of a misdemeanor and punished in discretion of the Court: *Provided further*, that owners or operators of such slot machines shall be repaid taxes already paid by them proportionate to the time for which they shall not operate such machines by virtue of this act.

Proviso as to merchants, etc., who offer gifts and rebates.

Unlawful to operate a slot machine when return is uncertain or nothing.

Violation a misdemeanor.

Penalty.

Proviso as to repayment of unexpired license taxes.

SEC. 62. *Slot machines with fixed returns.*

Any person, firm, or corporation, having on a street, alley or other place in any city or town, or on any public road in any county, or in shops, stores, hotels, boarding houses, depots, or public or private rooms, or any other place anywhere in the State of North Carolina, a slot machine of any description, into which are dropped pennies, nickels or coins of other denominations, to dispose of cigars, cigarettes, chewing gum, or other articles of merchandise, or musical, weighing, or other devices that operate on the nickel-in-the-slot principle used for gain, shall pay for every such slot machine, or musical, weighing or other devices, as the case may be, a license tax of two dollars and fifty cents per year, for the use and benefit of the State, to be collected and accounted for as all other taxes: *Provided*, that this section shall apply only to such slot machines where the return in all cases is fixed or certain.

Slot machines with fixed returns.

License tax $2.50 annually.

Proviso.

SEC. 63. *Skating rinks, etc.*

On each skating rink, bagatelle table, merry-go-round, hobby horses, switch-back railways, shooting galleries, or place for any other game or play, with or without a name (unless used for private amusement or exercise alone), whether kept in connection with or separate from any place where liquor is sold, twenty dollars in each county where the business is carried on.

Skating rinks, merry-go-rounds, etc., $20 in each county.

SEC. 64. *Stock brokers.*

ers in stocks, nds, etc., rivilege taxes.

Every dealer in stocks, bonds, or other securities shall pay for the privilege of transacting business a license tax as follows: In towns of less than five thousand inhabitants, twenty-five dollars; in towns of more than five and less than ten thousand inhabitants, fifty dollars; and in towns in excess of ten thousand inhabitants, he shall pay seventy-five dollars for each place of business kept for that purpose.

SEC. 65. *State banks, private bankers, etc.*

banks, vate bankers, annual tax $1 each $1,000 oyed capital. county, city wn taxes to llected under section.

Every State bank, savings bank, banking association or private banker shall pay annually to the State Treasurer, for the privilege of transacting business, the sum of one dollar for every thousand dollars employed as capital. No county, city or town shall collect any tax under this section.

SEC. 66. *Agents of packing houses.*

ts of packing $100 ers in county business is ected. not required tax d by this n.

Upon all agents of packing houses doing business in this State, one hundred dollars in each county where said business is carried on. Any person paying a tax as provided in section forty-eight of this act shall not be required to pay the tax imposed in this section.

SEC. 67. *Breweries and agencies of breweries.*

eries and es of eries. brewery

ies $50 for place of s.

On all breweries a tax of two hundred dollars; on all agencies of breweries for bottling, selling or distributing beer, ale, porter, or other malt liquors, in bottles, kegs, casks, or in other measure, a tax of fifty dollars for each place of business in each county where they carry on business.

SEC. 68. *Oil tanks.*

ks exceeding lons $20.

plicable to seed oil

On each tank exceeding five hundred gallons capacity kept for storing oil for distribution or sale in the State, twenty dollars. This section shall not apply to the tanks of cotton seed oil mills.

SEC. 69. *Dealers in futures.*

Dealers in fu

Upon every individual or firm, or his or their agents, engaged in the business of selling or buying farm products, sugar, coffee, and salt and meat, railroad stocks and bonds, and stocks and bonds of other kinds not intended for *bona fide* sale and delivery, but for future delivery (commonly called "futures"), whether said business is done through regularly organized stock and cotton exchanges, or boards of trade, an annual license tax as follows: In towns of less than five thousand inhabitants, fifty dollars; in towns of more than five and less than ten thousand inhabitants, one hundred dollars; in towns of more than ten and less than fifteen thousand inhabitants, two hundred dollars; and in towns in excess of fifteen thousand inhabitants, three hundred dollars: *Provided*, that this tax shall not be demanded of any cotton warehouseman, dealer in cotton, or any provision broker who takes orders in the regular course of trade only for the actual and *bona fide* delivery of cotton and other products so ordered, and where by the terms of the contract it is not left to the option of the party so ordering, or the party taking such order, to avoid the delivery of the produce or products, by paying the difference in the market price of such produce or products at the time of delivery: *Provided further*, that such cotton warehouseman, dealer in actual cotton, or any provision broker does not carry on the business of buying and selling "futures" in connection with his or their business.

Annual li
taxes.
In towns of l
than 5,000
inhabitants,
In towns
than 5,000 or
than 10,000 i
tants, $100.
More than 1
and less tha
15,000 inhabi
$200.
In towns of
than 15,000 i
itants, $300.
Proviso.

SEC. 70. *Liquor dealers.*

Liquor dealc

Every person, firm, company or association, incorporated or otherwise, selling spirituous, vinous or malt liquors, or medicated bitters, shall pay a license tax semi-annually in advance, on the first days of January and July as follows: First, for selling in quantities of five gallons or less, fifty dollars for each six months; second, for selling in quantities of five gallons or more, one hundred dollars for each six months; third, for selling malt liquors exclusively, twenty-five dollars for each six months. The license taken out under this section shall not authorize the sale of any greater or less quantity than is specified in said license. Nothing in this section

License tax
paid semi-
annually in
advance.
$50 semi-an
for selling in
quantities o
gallons or le
$100 semi-an
for selling in
quantities o
gallons or m
$25 semi-an
for selling m
liquors
exclusively.

shall prevent any person selling wines of his own manufacture at the place of manufacture, or within one hundred yards thereof, in quantities of not less than one quart, nor spirits in quantities of not less than one gallon.

SEC. 71. *Dealers in rice beer, medicated bitters, etc.*

Any person who shall sell any beverage which partakes of the intoxicating nature of spirituous, vinous or malt liquors, but which shall be designated under such names as rice beer, medicated bitters, champagne cider, cherry cider, orange cider, plum cider, or schiedam schnapps, and who shall fail to comply with the laws regulating the granting of license to liquor dealers, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred nor more than five hundred dollars, one-half of which shall go to the informant, or imprisoned not less than three months nor more than three years, at the discretion of the court.

SEC. 72. *Druggist selling liquors.*

Druggist dealing in spirituous, vinous or malt liquors, or medicated bitters, shall on or before the first day in June of each year obtain a license upon the payment of fifty dollars to the Sheriff or tax collector. But any druggist who allows liquor to be drunk within his place of business, or who sells liquors except upon the prescription of a practicing physician, as allowed by law, shall be subject to all the taxes levied upon dealers in liquors, and shall be guilty of a misdemeanor: *Provided*, that in towns of less than five hundred inhabitants, and in towns where the sale of liquor is otherwise restricted by law, the license shall be twenty-five dollars: *Provided further*, that nothing in this section shall have the effect of modifying or repealing, in whole or in part, chapter two hundred and fifteen, Public Laws of 1887, or chapter three hundred and seventy-five, Public Laws of 1889.

SEC. 73. *Grain distilleries.*

Each grain distillery operated at any time during the year where liquor is sold in quantities of from one to four gallons, inclusive, at the place of manufacture or within one hundred yards thereof, shall pay an annual license tax of twenty-five dollars to the State and twenty-five dollars to the county.

SEC. 74. *Social clubs.*

Social clubs may keep liquors on hand to be sold or given away to members to pay semi-annual license tax of ... for each member of said club in the preceding year.

Any organization chartered or organized as a social club which desires to keep on hand at their club house or other place of meeting, spirituous, vinous or malt liquors, or any mixture thereof, to be sold or given away to the members of such organization, shall, on the first day of January and July of each year, pay a semi-annual license tax of one dollar for every person who has been a member of such organization during the preceding year; but the tax shall be one-half of said amount when malt liquors only are sold or given away at such club. Unless and until the said tax has been paid, any person concerned in keeping such liquors, or any mixture thereof, and selling, directly or indirectly, or giving away the same, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than fifty dollars, or in the discretion of the Court imprisoned not more than six months, or both. No organization chartered or organized as a social club shall be deemed to be such and entitled to the privilege of this section unless at the time application is made for license, the president and secretary of such club shall exhibit to the board granting such license a list of the active members of such club on that day, and shall satisfy said board that such membership exceeds thirty *bona fide* members, and that such organization is a *bona fide* social club, and not an organization created and conducted for the purpose of violating or evading the laws of the State regulating the licensing and sale of liquors. The word members whenever used in this section shall not apply to any person under the age of twenty-one years. No social club for the dispensing of liquors shall hereafter be permitted or chartered in any county where the granting of liquor licenses is prohibited by law.

If malt liquors only are sold, tax to be one-half of above amount.

Misdemeanor to keep or sell directly or indirectly before taxes are paid. Penalty.

No organization entitled to privileges of this section unless President and Secretary at time of applying for license exhibit list of active members then on that day.

Membership to exceed 30 bona fide members, association to be bona fide as claimed.

"Members" construed.

No club for dispensing liquor permitted in county where granting liquor license is prohibited.

SEC. 75. *Taxes under the preceding sections for liquor licenses, how applied.*

Liquor license taxes to be applied to school fund.

The taxes levied either by the State or county, paid for liquor licenses under the preceding sections shall be paid to the Treasurer of County Board of Education for the benefit of the school fund of the schools of such county.

SEC. 76. *How liquor licenses may be procured.*

License, how procured.

Notice of intention to apply for license to be published.

How published.

County Commissioners not to consider application till satisfied as to notice has been fully complied with.

Granting of license may be contested.

Application to be in writing, signed by applicant, accompanied by affidavit of six freeholders.

Freeholders to make oath as to applicant being proper person to sell liquors, and building specified suitable place, &c.

License may be granted on filing application, etc.

Exception.

Commissioners may refuse license, when.

Every person, company or firm wishing to sell liquors under section seventy shall first advertise his intention of making such application by publishing a notice of such intention in some newspaper published in the county in which the business is proposed to be conducted, and if there be no newspaper published in said county, then by posting a written notice of such intention at the front door of the county courthouse for thirty days next preceding the day on which said application shall be presented to the Board of County Commissioners, and no Board of County Commissioners shall consider such application until it shall have been first proven to their satisfaction that the notice required by this section has been so published or posted. It shall be lawful for any who may consider himself aggrieved by the granting of such license to contest the same before the Board of County Commissioners. Every such application to the Board of County Commissioners for an order to the Sheriff to issue a license shall be in writing, signed by the applicant and accompanied by the affidavit of six freeholders who are taxpayers and residents of the township in which the applicant proposes to do business, all of whom shall declare upon oath that the applicant is a proper person to sell spirituous, vinous or malt liquors; that the building specified is a suitable place for the business to be carried on, and that he has not recommended any other person for liquor license in the same township. Upon the filing of such application and affidavit, the Board of County Commissioners may grant an order to the Sheriff to issue such license, except in territory where the sale of liquor is prohibited by law. But the Board of County Commissioners upon satisfactory evidence that such applicant has been convicted, or has been found to have confessed his guilt in a court of competent jurisdiction, of any violation of the laws of this State or any other State regulating the sale of liquors, or that the building specified is without the limits of an incorporated town or city, or is within two hundred feet in a direct line from any church edifice or the premises pertaining thereto, may refuse to grant an order to the Sheriff to issue license to such applicant. The license authorized within

an incorporated town or city under this section, shall first be granted by the authorities of such town or city. The Board of County Commissioners may, upon complaint made by any resident of the county that any person, company or firm holding a license under this section has violated the laws of this State regulating the sale of liquors, and upon satisfactory evidence of his guilt, revoke any license heretofore granted by them. Upon complaint made as aforesaid, the Board of County Commissioners shall forthwith summon such person, company or firm to appear before them at a time given, within thirty days, to show cause why such license and the order to issue same should not be revoked. All persons taking out license to sell spirituous, vinous or malt liquors, or any mixture thereof, under the provisions of this act, shall post up in some public place in their place of business the license issued to them. The license shall be printed in such form as the Treasurer of the State may prescribe and furnished by the Register of Deeds. Any person failing to post up the license as provided in this section shall be considered as doing business without license. Any person, company or firm taking out license as provided in this section on any date after the first day of July, shall pay the whole amount of tax for the six months ending the thirty-first day of December or the thirtieth day of June, as the case may be, after the date of license. No license shall be issued to any applicant under this section who is not a *bona fide* citizen of the United States, and a legal voter of North Carolina. No county shall levy more than as much tax as the State for license to sell liquors, and the payment and collection of the tax of the county shall be subject to the same provisions as the payment of the tax to the State: *Provided*, That the notices required to be given in this section shall not be required of applicants to sell spirituous, vinous or malt liquors in incorporated towns or cities, where license has already been granted by the authorities of such incorporated town or city. And in such towns and cities where the qualified voters shall hereafter, under a special act of the General Assembly, vote in favor of license, then the County Commissioners shall grant an order to the Sheriff to issue license subject to all the provisions of this section.

License to be granted by town and city authorities.

County Commissioners may revoke license on complaint made of violation of law, etc.

Upon complaint made Board of Commissioners summon party complained of to show cause.

License to be posted in place of business

Form of license, etc.

Penalty for failure to post license.

License issued after first day of July, whole amount of tax to be paid.

No license to issue unless applicant is a bona-fide citizen and legal voter.

No county to levy greater license tax than the State

Proviso as to notice in incorporated towns where license has been granted.

Where qualified voters of any town or city shall hereafter vote for license, County Commissioners order sheriff to issue, etc.

SEC. 77. *Merchants' tax.*

Dealers in goods, wares, merchandise, etc., to pay an annual license tax of $1.

Each vendor of or dealer in goods, wares, merchandise, commodities or effects of whatsoever kind or nature, either retail or wholesale, except such business or trades as are specially mentioned by name in other sections of this schedule and which have a fixed annual license fee levied upon them, shall pay an annual license tax of one dollar; and all persons so engaged shall pay annually on the whole volume of gross sales, according to the following schedule:

Merchants, etc., to pay annually on gross sales.

Schedule of taxes on gross sales.

On sales less than				$ 500.00 ..	.50
On sales over	500.00,	less than		1,000.00 ..	$ 1.00
On sales over	1,000.00,	less than		2,000.00 ..	1.50
On sales over	2,000.00,	less than		5,000.00 ..	2.50
On sales over	5,000.00,	less than		10,000.00 ..	4.00
On sales over	10,000.00,	less than		20,000.00 ..	8.00
On sales over	20,000.00,	less than		40,000.00 ..	12.00
On sales over	40,000.00,	less than		60,000.00 ..	16.00
On sales over	60,000.00,	less than		80,000.00 ..	20.00
On sales over	80,000.00,	less than		100,000.00 ..	24.00
On sales over	100,000.00,	less than		150,000.00 ..	28.00
On sales over	150,000.00,	less than		200,000.00 ..	30.00
On sales over	200,000.00,	less than		300,000.00 ..	35.00
On sales over	300,000.00,	less than		500,000.00 ..	40.00
On sales over	500,000.00,	less than		750,000.00 ..	50.00
On sales over	750,000.00,	less than		1,000,000.00 ..	60.00
On sales over	1,000,000.00				70.00

Persons mentioned to render annual schedules of gross sales to Clerk of Board of County Commissioners by June 10th each year for preceding year.

To state class of sales.

Clerk to keep record of lists.

Sheriff to have copy.

Duty of sheriff to collect.

Every person mentioned in this section shall within ten days after the first day of January in each year, deliver to the Clerk of the Board of County Commissioners a sworn statement of the amount of his gross sales for the twelve months or any part of said time prior thereto as per schedule made above, stating within which class his sales comes. The clerk shall keep a book in which shall be recorded the list given to him as herein required and shall furnish the Sheriff with a copy of said list within ten days after the same are given in. It shall be the duty of the Sheriff to collect from

every person on said list furnished him by the clerk as aforesaid the taxes embraced therein.

The Board of County Commissioners shall have power to require the merchant or dealer making his statement to submit his books for examination to them. County Commissioners empowered to require dealers submit books for examination.

Every merchant or dealer failing to render such list or refusing on demand to submit his books for such examination, shall be guilty of a misdemeanor. It shall further be the duty of the Chairman of the Board of County Commissioners to prosecute any merchant or dealer refusing as aforesaid, for the purpose of obtaining such information and compelling payment of the proper tax. For services required of the Clerk of the Board of County Commissioners in this section he shall receive a fee of fifteen cents on each return, for each year, which shall be allowed by the County Commissioners and paid by the County Treasurer. Misdemeanor fail to return or submit books. Chairman of board to prose merchants or dealer for refu to submit list or books. Fee of clerk to Board of Commissioners

SEC. 78. *Insurance companies.*

The officer authorized to collect the tax on insurance, bond and investment companies, associations or orders, shall collect and pay into the State Treasury charges, fees and taxes as follows: For each license issued to a life insurance company or association $250.00; for each license issued to a fire insurance company or association or to any company or association of companies operating a separate or distinct plant of agencies, $200.00; for each license issued to an accident insurance company or association, $200.00; for each license issued to a marine insurance company or association, $200.00; for each license issued to a surety insurance company or association, $100.00; for each license issued to a plate glass insurance company or association, $100.00; for each license issued to a boiler insurance company or association, $100.00; for each license issued to a domestic mutual insurance company, $50.00; for license issued to a domestic mutual insurance company, operating in not more than two counties, $10.00; for license issued to a fraternal order, $25.00; for license issued to a bond, investment, dividend, guarantee, registry, title guarantee or debenture company, $100.00; for each Insurance companies; officer authorized to collect tax on insurance companies, etc., to same into the Treasury. Life insurance company's license $250. Fire insurance company's, license $200. Accident insurance company license $200. Marine insurance company's li $200. Surety insurance company, license $100. Plate-glass in ance company license $100. Boiler insura company, license, $100. Domestic mu insurance com pany, license Operating in more than t counties, $10 Fraternal order, $25.

nd, investment, dividend, aranty, etc., mpany, $100.

ll other mpanies, $100.

ll companies to y a tax of 2½ r cent on gross ceipts in State.

roviso as to comnies having ets invested in ate, tax to be per cent.

icense fee ½ med above.

axes when ¾ of tal assets ested in State.

ompanies paying license taxes not liable for tax on capital stock. No other taxes to be imposed.

icense fees to be paid to Insurance ommissioner. ommissioner to pay into State reasury.

ealers in pistols, etc., license ax $10.

anos and organs, each company, manufacturer or agent to pay a license tax of $10 to sheriff, $10 on each brand sold.

enses, how issued and countersigned.

eriff, etc., to keep this section printed on face of license.

license issued to all other insurance companies or associations, $100.00. All of said companies shall pay a tax of 2½ (per centum) upon the amount of their gross receipts in this State: *Provided*, that if any general agent shall file with the Insurance Commissioner a sworn statement showing that at least one-fourth of the entire assets of his company, when his company has assets, are invested in and are maintained in any or all of the following securities or property, viz.: bonds of this State, or of any county, city or town of this State, or any property situated in this State and taxable therein, then the tax shall be one per centum upon the gross receipts aforesaid, and the license fee shall be one-half that named above, and if the amount so invested shall be three-fourths of the total assets, the tax shall be one-half of one per centum and the license fee one-fourth of that named above. Companies paying the taxes levied in this section shall not be liable for tax on their capital stock, and no county or corporation shall be allowed to impose any additional tax, license or fee. The license fees and taxes imposed in this section shall be paid to the Insurance Commissioner, and by him paid into the State Treasury, as provided by law.

SEC. 79. *Dealers in pistols, etc.*

Every merchant, storekeeper or dealer who shall keep in stock, sell or offer for sale, any pistol, bowie knife, dirk, dagger, slung-shot, loaded cane or brass, iron or metallic knuckles, shall pay an annual license tax of ten dollars.

SEC. 80. *Pianos and organs.*

Every person, company or manufacturer who shall engage in the business of selling pianos or organs by sample, list or otherwise in this State, shall, before selling or offering for sale, any such instrument, pay to the Sheriff or tax collector, a tax of ten dollars on each brand and obtain a license which shall operate one year from this date, and all licenses provided for in this section shall be countersigned by the Register of Deeds, and shall not be valid unless so countersigned. It shall be the duty of the Sheriff or tax collector

to have this section printed on the face of each license issued under this act for the information and protection of parties to whom the same may be issued. A separate tax shall be paid by each person, company or manufacturer for every class or style of instrument having a separate or distinct name, sold by him or them. The parties obtaining license under this section shall not be taxed by any county, city or town government. Any person required to take out license under this section, who shall sell or attempt to sell any instrument without having obtained license, shall be deemed guilty of a misdemeanor and upon conviction shall be fined one hundred dollars or imprisoned not exceeding thirty days, the fine to be paid to the Sheriff or tax collector as other taxes. In addition to the said fine or imprisonment any person violating the provisions of this section shall pay a penalty to the officer making the arrest of two hundred dollars, one hundred dollars thereof to be paid into the Treasury as other taxes, and one hundred dollars to the officer making the arrest. It shall be the duty of all county, town and township bonded officers to prosecute for penalties under this section.

Separate tax for every class or style of instrument.

No other taxes allowed.

Misdemeanor sell or attempt sell without license.

Penalty.

Additional Penalty.

Penalty, how applied.

Duty of office prosecute.

SEC. 81. *Cigarette dealers and manufacturers of cigarettes.*

On every manufacturer of cigarettes the following tax: Where the annual output of cigarettes by such manufacturer in less than 250 millions, $250.00; where such annual output exceeds 250 millions, but does not exceed 500 millions, $500.00; where such output exceeds 500 millions, $1,000.00: *Provided*, that no county, city, town, or township shall levy or collect any tax, assessment, license or fee from or on such manufacturer, except the *ad valorem* tax. And every person retailing cigarettes shall pay a license tax of five dollars per annum. No county, city or town shall levy any tax under this section.

Annual output less than 250,000,000 tax

Output between 250,000,000 and 500,000,000 tax

Exceeding 500,000,000 $1,

No county, et to collect any except ad valorem.

License tax fo retailing cigarettes $5.

No county, et to levy tax.

SEC. 82. *Public ferries, bridges, etc.*

On every public ferry, bridge and toll-gate across highways, one per centum of gross receipts; and any person or company operating any such ferry, bridge or toll-gate shall make re-

Public ferries bridges, etc., pay a tax of cent. of gross receipts.

Returns of receipts to be made to Register of Deeds under oath.

When made.

turns on oath of such receipts to the Register of Deeds of the county in which such public ferry, bridge or toll-gate is located, within ten days after the first days of January and July of each year, and at the same time pay to the Sheriff the tax herein imposed.

SEC. 83. *Purchase tax; liquor dealers.*

Liquor dealer to pay purchase tax in addition to ad valorem tax.

Every person who shall buy for the purpose of selling spirituous, vinous or malt liquors, shall, in addition to the *ad valorem* tax on his stock and the license tax levied in section seventy and seventy-two, pay as a license tax two per centum on the total amount of his purchases in or out of the State for cash or credit, whether such person shall purchase as principal or agent or through a commission merchant. Every person mentioned in this section shall, within ten days after the first days of January and July in each year, deliver to the Clerk of the Board of County Commissioners a sworn statement of the total amount of his purchases for the preceding six months, ending on the thirty-first day of December and on the thirtieth day of June.

Purchase tax 2 per cent of total purchases in or out of State, etc.

Sworn statement of purchases to be made to clerk of Board of County Commissioners semi-annually, in January and July.

SEC. 84. *Emigrant agents.*

Tax on emigrant agents $25.

On every emigrant agent or person engaged in procuring laborers to accept employment in another State a tax of twenty-five dollars.

SEC. 85. *Itinerant oculists.*

Tax on itinerant oculists or opticians $5 annually.

Upon every itinerant oculist or optician an annual license tax of twenty-five dollars for each county in which he may practice.

SEC. 86. *Trading stamps.*

Persons issuing or selling to merchants annual tax of $50 for each county.

Upon every person, firm or corporation who issues or sells to merchants or manufacturers any trading stamps or other devices to be redeemed by the person issuing or selling the same, an annual license tax of fifty dollars for each county in which they engage in business.

Schedule C.

Sec. 87. *Defining taxes embraced in this schedule.*

The taxes embraced in this schedule shall be listed and paid as specially herein provided, and shall be for the privilege of carrying on the business or doing the act named, and shall be subject to other regulations mentioned in section thirty-five under Schedule B.

Taxes to be pa as herein pro vided for and subject to rest tions in sectio Schedule B.

Sec. 88. *Privilege tax on railroads.*

Every steam railroad company and every person operating a steam railroad in this State shall, on or before the tenth day of July in each year, make and return to the State Treasurer, in such form and upon such blanks as shall be furnished by him, a true statement of the gross earnings of their respective roads for the preceding year ending the thirtieth day of June; of the number of miles of road operated by each such company or person, and the number of miles in the State, and the gross earnings per mile per annum during such year; which statement shall be verified by the oath of the secretary and treasurer of such companies, or of the person so operating such railroad.

Every railroa company or p son operating same shall ma statement to State Treasur on or before J 10th each yea gross earning year ending 3 30th previous

Shall return n ber of miles operated, and number of mi in State and earnings per per annum.

Sec. 89. *Rate of taxation.*

The annual license tax for operating such railroads within the State shall be as follows: When gross earnings per mile are one thousand dollars, or less, per year, a tax of two dollars per mile; when gross earnings per mile exceed one thousand dollars per year, but do not exceed two thousand dollars, a tax of three dollars per mile; when gross earnings per mile exceed two thousand dollars per year, but do not exceed three thousand a tax of four dollars per mile; when gross earnings per mile are in excess of three thousand dollars per year, a tax of five dollars per mile. The tax imposed by this section shall be paid to the State Treasurer at the time of making the report provided in section eighty-eight. No county, city or town shall be allowed to collect any tax under this section.

Annual licens tax.

Schedule of annual taxes gross earning

press and
graph com-
ies, tax on.
o per cent on
ss receipts.
viso when ¼
ts are
ested in N. C.
e, county or
r bonds, tax
e 1½ per cent.
gross
ipts.
half assets
ested in State
rities, etc.,
to be 1 per
. on gross
lings.

ount invested
e-fourths of
assets, tax to
ne-half of
per cent.

rintendent,
to make
rn under oath
ate
asurer
steriy.

ay tax to
Treasurer at
of making
n.

iff to report
easurer com-
doing busi-
in his county.

lty in case
fault.

collected.

so.

n
rations.

ions.

l franchise
aduated.

SEC. 90. *Express Companies, Telegraph Companies, etc.*

Every express company, telegraph company and telephone company shall pay a license tax of two per centum on its gross receipts within the State: *Provided*, that if any such company shall file with the Board of State Tax Commissioners a statement signed and sworn to by its principal officer in this State showing that at least one-quarter of the entire assets of his company, when his company has assets, are invested in and are maintained in any or all of the following securities or property, viz., bonds of this State, or of any county, city or town of this State, or any property situate in this State and taxable therein, then the tax shall be one and one-half per cent.; and if the amount so invested shall be one-half of its total assets, the tax shall be one per cent.; and if the amount so invested shall be three-fourths of its total assets, the tax shall be one-half of one per cent. The superintendent, general manager, or other chief officer of every such company shall make return under oath to the Treasurer of the State within ten days after the first day of January, April, July and October, of each year, of the amount of the gross receipts of the company for the quarter ending on the first day of the month immediately preceding, and pay to the Treasurer the tax here imposed at the time of making such return. It shall be the duty of each Sheriff to report to the Treasurer any such company doing business in his county. In case of default of such return and payment of tax, the company shall pay a penalty of one thousand dollars, to be collected by such Sheriff as the Treasurer of the State shall designate, by distress or otherwise: *Provided*, no county or corporation shall be allowed to impose any additional tax, license or fee except the *ad valorem* tax.

SEC. 91. *Tax on corporations.*

On each and every corporation organized under the laws of this State or doing business in this State (railroads, banks, building and loan associations, insurance companies, telegraph companies, express companies and telephone companies excepted), an annual franchise tax in proportion to the amount

of its capital stock, according to the following graduated scale, to-wit: On corporations having a capital stock paid in or subscribed of twenty-five thousand dollars or less, five dollars; over twenty-five thousand dollars and not exceeding fifty thousand dollars, ten dollars; over fifty thousand dollars and not exceeding one hundred thousand dollars, twenty-five dollars; over one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars, fifty dollars; over two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars, one hundred dollars; over five hundred thousand dollars and not exceeding one million dollars, two hundred dollars; over one million dollars, five hundred dollars. In addition to the penalties otherwise provided in this act, the failure for three consecutive years to pay the franchise tax imposed by this section shall cause a forfeiture of the charter of such defaulting corporation, and its charter in that event shall be and the same is hereby repealed. When the capital stock of any land company or corporation shall not amount in actual value to more than ten thousand dollars, the tax imposed by this section shall be twenty-five dollars and no more: *Provided*, that the payment of the tax imposed by this section shall not exempt any corporation from the payment of the license taxes levied under Schedule B of this act: *Provided further*, that the tax provided for under this section shall be payable in the county of this State where it has its principal office.

Failure to pa franchise tax three years forfeiture of charter.

Tax on land company w capital stock not exceed to be $25.

Proviso as to license tax.

Proviso as to when taxes paid.

SEC. 92. *On each marriage license one dollar.*

The tax on marriage licenses shall be paid to the Register of Deeds. It shall be the duty of the Register of Deeds to render annually to the Sheriff on the first Monday in December sworn statements in detail of taxes received by him under this section, and at the same time pay him the money thus received, and thereupon the Sheriff shall file the statements of the Register of Deeds with the Clerk of the Superior Court. The said marriage license tax shall be paid to the State Treasurer by the Sheriff of the county in which the same is collected when he settles for the other State taxes. The counties may levy the same tax upon marriage licenses as is levied by the State.

Marriage lic tax $1, paid Register of

Register of D to render statement t Sheriff of ta received u this section turn over t Sheriff.

Sheriff to fi statement w Clerk of the Court.

Tax to be p State Tre Sheriff.

SEC. 93. *Tax on seal affixed by officers.*

Whenever the seal of State, of the Treasury Department or other public officer required by law to keep a seal (not including Clerks of the Courts, other county officers and Notaries Public), shall be affixed to any paper, the tax shall be as follows, to be paid by the party applying for the same: For the Great Seal of the State on any commission, one dollar, except Magistrates' commissions, which shall be without fee; on warrants of extradition for fugitives from justice from other States, a reciprocal seal tax and fee shall be charged, *i. e.*, the same fee and seal tax must be collected from the State making requisition which is charged this State for like service; all fees and seal taxes of whatever kind, collected by the Private Secretary of the Governor, shall be paid into the Treasury quarterly; for the seal of the State Department fifty cents, to be collected by the Secretary of State and paid by him into the Treasury, for the seal of the State Treasurer, to be collected by him and accounted for as other public money, fifty cents. Said officers shall keep an account of the number of times their seals may be used, and shall deliver to the proper officer a sworn statement thereof. Whenever a scroll is used in the absence of a seal by any of said officers, the said tax shall be on the scroll. Seals affixed for the use of any county or the State, or used on the commissions of officers of the militia, Justices of the Peace, or any other public officer not having a salary, or under the pension law, or upon any process of Court, shall be exempt from taxation. The officers collecting the said taxes and fees may retain as compensation five per centum, except in case of Sheriffs, whose compensation shall be allowed by the Auditor. Any person receiving taxes under this section and wilfully refusing or neglecting to pay the same as required, shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned at the discretion of the Court.

SEC. 94. *Licenses to be countersigned and recorded by the Register of Deeds.*

All licenses issued in accordance with this act, except those issued by the State Treasurer shall not be valid until they shall be exhibited to and countersigned by the Register of Deeds, by whom a permanent record of all such licenses shall be kept. The Register of Deeds shall be entitled to a fee of twenty-five cents for each license recorded by him, to be paid by the person applying for the license.

Licenses, e... those issue... State Tre... not valid u... countersig... Register o... Record to... Register's ... recording.

SEC. 95. *State Treasurer to sue for taxes.*

Upon failure to pay to the State Treasurer within thirty days after the same shall have become due, any tax which by law is made payable direct to the State Treasurer, it shall be his duty to institute an action to enforce the same in the county of Wake, or in the county in which the property taxed is located.

State Trea... sue for all ... not paid w... days after ... becomes d... Suit, when ... brought.

SEC. 96. *Last United States census shall determine population.*

For all cases in this act where population controls the price or amount of tax, the last census report of the Federal Government shall govern.

Populatio... determine... last U. S. c...

SEC. 97. *Fines for benefit of school fund.*

Whenever any officer, including Justices of the Peace, receives or collects a fine, penalty or forfeiture in behalf of the State, he shall, within thirty days after such reception or collection, pay over and account for the same to the treasurer of the County Board of Education for the benefit of the fund for establishing and maintaining the free public schools in such county. Whenever any fine or penalty is imposed by any officer, the said fine or penalty shall be at once docketed, and shall not be remitted except for good and sufficient reasons, which shall be stated on the docket.

Officers co... fines, pen... forfeiture... behalf of t... shall pay ... County T... in 30 days... benefit of ... school fu...

Fine or p... imposed ... docketed, ... to be rem... except fo... reasons.

Sec. 98. *Misappropriation of taxes deemed embezzlement.*

Any officer, including Justices of the Peace, violating the preceding section, or appropriating to his own use any State, county, school, city or town taxes shall be guilty of embezzlement, and upon conviction shall be punished by imprisonment in the State's prison for not less than six months nor more than five years, at the discretion of the Court.

Sec. 99. *Subjects of taxation revised in this act not otherwise taxable.*

All laws imposing taxes, the subjects of which are revised in this act, are hereby repealed: *Provided*, that this repeal shall not extend to the provisions of any law, so far as they relate to the taxes listed, or which ought to or would have been listed, or which may be due previous to the ratification of this act.

Sec. 100. *Auditor shall reject incomplete returns.*

The Auditor of State is hereby required to reject the annual returns of any Sheriff when he has good reasons to believe said returns are not entirely correct and contain material omissions in Schedules B and C in any of the subjects of taxation therein provided, and may make investigations as to such omissions and for this purpose may send for persons and papers.

Sec. 101. *Duty of Sheriff in case of violations of the provisions of this act.*

That it shall be and is hereby made the duty of the Sheriff of each county in the State to make diligent inquiry as to whether or not all license taxes provided for under Schedules B and C of this act shall have been paid, and any person, firm or corporation liable for such license tax who fails or refuses to pay such tax when demanded by the Sheriff, shall be guilty of a misdemeanor and punished by fine or imprisonment at the discretion of the Court; and it shall be the duty of the Sheriff upon the failure of any such person, firm or corporation to pay such license tax on demand to swear out a

warrant before some Justice of the Peace in said county, and if on the hearing of said matter the Justice shall find that there is probable cause for believing that such person, persons or corporation is guilty of a violation of this act, he shall cause such person, persons or corporation to enter bond for appearance at the next term of the Superior Court of said county to answer the charge: *Provided, however,* that if said person, persons or corporation shall pay to the Sheriff the full amount of such license tax and all costs and expenses due said Sheriff and the Justices of the Peace before the cause is heard before said Justice, then said Justice may dismiss the action. And upon failure of any person, persons or corporation to pay any of the license taxes imposed by this act when due the Sheriff shall have the power to levy upon any personal or real estate owned by such person, persons or corporation as provided in other cases where taxes are collected by distraint.

Justice's find on hearing pr probable cau bind over to Superior Cou

Proviso.

Power of she to levy on lan to pay.

SEC. 102. *Unless prohibited, county may levy same license tax as State.*

In any case where a specific license tax is levied for the privilege of carrying on any business, trade or profession, the county may levy the same tax and no more: *Provided,* no provision to the contrary is made in the section levying the specific license tax.

County may l same licens taxes as State unless prohib by this act.

SEC. 103. *Penalty for not securing license.*

Every person who shall practice any trade or profession, or use any franchise taxed by the laws of North Carolina without having paid the tax and obtained a license as required in this act, shall be deemed guilty of a misdemeanor and punished by fine or imprisonment, and shall also forfeit and pay a penalty of fifty dollars, which penalty the Sheriff of the county in which it has occurred, shall cause to be recovered before any Justice of the Peace of the county for the benefit of the school fund of the county.

Persons not p ing license ta guilty of a misdemeanor.

How punishe

Penalty, how recovered.

SEC. 104. *License for each location.*

Every individual or firm carrying on or conducting either of the trades or business upon which a specific amount of

License tax requir d for separate loca of business.

license tax is levied, shall pay the required license tax for every separate location in which the trade or business is conducted, unless otherwise herein provided.

SEC. 105. *Appropriation for Auditor and Treasurer.*

$2,500 appropriated for use of Treasurer, to be used in enforcing collection of taxes.

A sum not to exceed twenty-five hundred dollars is hereby appropriated out of any moneys not otherwise appropriated, to be expended by the Treasurer of the State as he may deem best and necessary to secure the prompt and proper collection of taxes, and the protection of the Treasury.

Like amount appropriated to use of Auditor for proper enforcement of Machinery Act. Act not to be so construed as to permit Treasurer and Auditor to use greater amount than formerly to pay expenses of their offices.

And a like amount of twenty-five hundred dollars, or so much thereof as may be necessary, is hereby appropriated to be used by the Auditor of State for the proper enforcement of the Machinery Act. Nothing in this section shall be so construed as to permit either the State Treasurer or the State Auditor to use a greater amount than hitherto used by these officials to defray the expenses of their offices.

SEC. 106. This act shall be in force from and after its ratification.

In the General Assembly read three times, and ratified this the 15th day of March, A. D. 1901.

FILE COPY.

Office Supreme Court U
FILED
NOV 11 1903
JAMES H. McKENNEY,
Clerk

74

No. 18,587.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903.

THE NORFOLK AND WESTERN RAILROAD COMPANY AND MRS. O. L. SATTERFIELD, PLAINTIFFS IN ERROR,

vs.

JOHN R. SIMS, SHERIFF OF PERSON COUNTY, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

JAMES E. SHEPHERD,
ROBERT D. GILMER,
Attorney-General,
Counsel for Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903.

No. 18587.

THE NORFOLK AND WESTERN RAILROAD COMPANY AND MRS. O. L. SATTERFIELD, PLAINTIFFS IN ERROR,

vs.

JOHN R. SIMS, SHERIFF OF PERSON COUNTY, DEFENDANT IN ERROR.

BRIEF OF ARGUMENT OF DEFENDANT IN ERROR.

THE CORPORATION OF THE STATE OF ILLINOIS KNOWN AS SEARS, ROEBUCK & CO. SOLD OR OFFERED TO SELL SEWING MACHINES IN NORTH CAROLINA WITHOUT A LICENSE AS REQUIRED BY THE LAWS OF THAT STATE, AND THEREBY BECAME INDEBTED TO THE STATE IN THE SUM OF $350, IT BEING THE AMOUNT OF THE LICENSE TAX.

Section 52 of chapter 9, Acts 1901, provides that "Every manufacturer of sewing machines and every person or persons or corporation engaged in the business of selling the same in this State shall, before selling or offering for sale any such

machine, pay to the State Treasurer a tax of $350 and obtain a license." * * * "Any person required to take out license under this section who shall sell or attempt to sell any machine without having obtained license shall be deemed guilty of a misdemeanor," etc.

(a)

In section 10 of the statement of facts agreed (p. 9, Record) it will appear that Sears, Roebuck & Co. of Chicago, the manufacturers and sellers and consignors of the machines, have never paid the said tax nor obtained a license, and it further appears that, prior to the transaction with Mrs. Satterfield, it had "made several deliveries at various points in North Carolina on the lines of other interstate railroads running into North Carolina, upon the presentation of bills of lading, under the *same conditions as above described.*

(b)

If, then, these several transactions and deliveries amounted to a sale or an offer to sell or an attempt to sell in North Carolina on the part of the Chicago company, then, at the time of the levy upon the particular machine in controversy, it was indebted to the State in the sum of $350, and whatever property it had within the State was the subject of levy for said taxes, and the said company and its agents in North Carolina assisting in such violation of the revenue law were all guilty of misdemeanors and subject to the punishment and penalties prescribed.

(c)

It is contended on the part of the plaintiffs in error that the sale was made in Chicago and that the company was therefore not liable to the tax.

The defendant in error insists that the sale was not made in Chicago, but was only an executory contract which was to be completed in North Carolina, and that until the compliance

with the conditions imposed, to-wit, the payment of the purchase money evidenced by the bill of lading, the property was still in and under the control of the said company. The sale was to be completed here through the agents of the said Chicago company.

It is respectfully submitted that this is an attempt to evade the revenue law of the State, and it is too clear for argument that the railroad and express agents concerned in all of these transactions (who were one and the same person) were the agents of the Chicago company, and that it was only through them as such agents of the said Chicago company, that a complete sale of machines was effected. The authorities upon this point are abundant. The transaction is, in effect, as between these parties (the bill of lading not having been transferred to third parties), a "C. O. D." transaction. No matter what it is called, the agreement here was that the sale was not to be completed until the price was paid.

"Goods are frequently sent, especially by the express carrier, with instructions not to deliver them until they are paid for. In such cases it is understood that the payment of the price and the delivery of the goods are to be concurrent acts. The carrier who accepts the goods with such instructions undertakes that they shall not be delivered unless the condition of payment be complied with, *and becomes the agent of the shipper* of the goods to receive such payment. He therefore undertakes, in addition to his duties of carrier, to collect for the consignor the price of the goods."

Hutchins on Carriers, sec. 389.

"The obligation to require payment for the goods (or, as we say, the evidence of it), as a condition of their delivery, does not arise from the implied duty of the carrier," but is a matter of contract *whereby the agent of the carrier becomes the agent of the shipper at the point of destination.*

Ibid., sec. 391.

If the carrier should deliver without payment or the performance of other conditions imposed, the owner can recover them of the consignee, unless the consignee has sold them to a *bona fide* purchaser, as in *Barnes v. Railroad*, 104 N. C., page 25. He may also sue the railroad company.

Ibid., sec. 390.

Tiedman on Sales, sec. 85.

In Tiedman on Sales, sec. 95, it is said: "But this is not the case where the seller determines or the contract requires him to make the common carrier his own agent. In such cases there is no transfer of possession until the goods have been delivered by the carrier to the vendee or his agent. *The common method of reserving title and possession after delivery to the carrier is to have a bill of lading.*" etc.

In section 87 the same author remarks: "Where a buyer is required to do anything as a condition precedent, it follows, of course, that the title does not pass until the condition is performed. *The most common example is the prepayment of the price.* Before delivering, the title will not pass until the price is paid, wherever the contract calls for the prepayment of the price."

Apart, however, from all of these authorities, the case of *O'Neil v. Vermont*, 144 U. S., 324, is decisive of the one at bar upon this, and also upon the question of interstate commerce. This case has never, so far as we can find, been overruled or modified as to points with which we are concerned in this discussion.

The only points distinguished are in 12 Rose's Notes, page 170. By reference to that work it will appear that the decision as to the points involved in this case is untouched. The statute of Vermont provided that no one should sell intoxicating liquor within the State. O'Neil lived in New York and shipped packages of liquor from that place by express to Rutland, Vermont, to be delivered to consignee

upon payment of price. The question presented was whether the sale was made in Vermont, and the Supreme Court of that State held that it was. The Court said: "The vendors made the express company *their agent* in the matter of the delivery of the goods, with instructions not to part with the possession of them except upon prior or contemporaneous receipt of the price. The contract of sale, therefore, remained inchoate or executory while the goods were in transit or in the hands of the express company, and could only become executed and complete by their delivery to the consignee. There was a completed executory *contract* of sale in New York, but the completed *sale* was, or was to be, in this State." A reading of the opinion will, we think, show that the Supreme Court of the United States were inclined to the same opinion. Indeed, it is sustained by all of the authorities and the principle distinctly declared in *Dows v. Nat. Ex. Bank*, 91 U. S., page 631.

No cases have been cited by the plaintiffs in error in opposition to the well-settled principles declared in the opinion of the Supreme Court of Vermont and in *Dows v. Nat. Ex. Bank, supra*. In the O'Neil case this Court very clearly considered either the ruling correct or that it was bound to follow it. Can there be a question, in view of all the authorities, including the decisions of this Court, but that the sale of the machines in question was made in North Carolina by the Chicago corporation, Sears, Roebuck & Co., through its agents in that State? It would be difficult to understand how the same circumstances can constitute a sale in Vermont so as to subject the New York vendor to the penalties of the criminal laws of Vermont, and not be a sale in North Carolina so as to subject the Chicago vendors to liability for taxes under the laws of North Carolina.

The cases cited on the argument below do not, we submit, apply to our case. The point in *Crook v. Cowan*, 64 N. C.,

743, was simply whether a contract was made so that Crook could sue *in assumpsit* upon it, he having, in effect, tendered the goods through the express company to the vendee. The point as to whether the sale was complete in the view we are considering was not involved and not discussed. In *Ober v. Smith*, 78 N. C., 313, it was simply held that a delivery to the carrier upon an unconditional order was a delivery to the vendee. The same in *State v. Graves*, 121 N. C., 632. This is not in point at all here, but the following language of the opinion in Ober's case is directly in point and is altogether in line with all the authorities. The Court said: "If it appeared that * * * the vendor intended to control the goods and to retain the *jus disponendi* by sending a bill of lading to his agent or to a third person, with instructions not to deliver until the goods are paid for, then in such cases the title would not vest in the purchaser by the delivery to the carrier." On the same line is *State v. Wernwag*, 116 N. C., 1061.

---

(2)

THE CHICAGO CORPORATION, SEARS, ROEBUCK & CO., HAVING INCURRED THE LIABILITY FOR TAXES, ITS PROPERTY WAS SUBJECT TO LEVY BY THE DEFENDANT IN ERROR, AND THE MACHINE IN QUESTION WAS ITS PROPERTY, THE LEVY HAVING BEEN MADE BY DEFENDANT IN ERROR BEFORE THE TERMS HAD BEEN COMPLIED WITH BY PAYMENT AND THE DELIVERY OF THE BILL OF LADING.

The machine in question was the property of the Chicago company at the time of the levy, because payment and delivery of the bill of lading had not been made. (See paragraphs 6 and 10 of "Facts Agreed," pp. 8 and 9, Record; see also "Agreement and Stipulation" as to levy, p. 16 of

Record; also paragraph 9, p. 12 of Record). This being so, it was subject to levy for the taxes due by said owner to the State for previous similar violations of the law as well as for the violation in the present transaction.

It will be noted that the defendant in error does not propose to take the machine from the warehouse of the railroad company without the payment of freight, nor does the judgment of the Court authorize this to be done. (See paragraphs 9 and 11 of the judgment, p. 12 of the Record). On the contrary, the "Agreement and Stipulation" (p. 16, Record) expressly provides for the possession of the machine until this case is finally decided. It being the property of the Chicago owners, the defendant in error insists that it can be levied upon as such property, although in the warehouse of the railroad company. As we have said, at the time of the levy Mrs. Satterfield had not complied with the terms of the contract. She had not paid to the express agent the purchase money and taken the bill of lading to the agent of the railroad company, who was also the express agent. She had done none of these things. Therefore there was either no contract at all, or it was executory. It will be seen from the authorities cited that his Honor below could well find that there were no contract rights which were to be acquired until the payment; but taking the transaction to be executory, no sale had been made, and the title still being in the Chicago company, was the subject of levy. We think all of the above authorities sustain this contention. The machine was the property of the company until the contract was complied with, and was the subject of levy. If the Chicago company was prevented from completing its unlawful sales and the further violation of the law, it was its duty to have obtained a license and shipped another machine to Mrs. Satterfield.

It is a strange doctrine that she has any right to insist upon the completion of a transaction which would be an evasion

and violation of the law. If, under these circumstances, this machine is not the subject of levy, the State will be unable to enforce all laws of this character and which yield a large income. Devices of this kind can be easily resorted to by the aid of the agents of express and railroad companies and the revenue laws defeated.

---

(3)

THE LEVY IN THIS CASE IS NOT A VIOLATION OF THE LAW AS TO INTERSTATE COMMERCE.

The contention of the railroad company in this case, as we understand it, is that in some way this evasion of the laws of a State is protected by the interstate commerce clause of the Federal Constitution, and that, under its shield, a railroad, its agents, and the agents of express companies, can become the agents of foreign corporations for the purpose of making or completing sales for them in another State, and thus enable such foreign corporations to defeat the license laws of such State.

It can hardly be contended that the levy upon a debtor's property in the possession of a railroad company is inhibited. Such a levy can surely be made on goods, the goods of A in the possession of B, and we are at a loss to understand how railroad companies, after the transit is ended, can make their warehouses places of refuge against the enforcement of legal process. We are not obstructing the carrier. *The carrier's duty has been performed, and it holds the machines in its warehouse as the agent of the Chicago company, and such agency concerns alone the completion of a sale by the receipt of the purchase-money and delivery.* It has nothing what-

ever to do with the carriage of the goods, and therefore no interstate commercial element can enter into the matter.

In Shinn on Attachment, Vol. 2, sec. 578, it is said, after denying the right before the goods reach the State: "But where the property has reached its destination and the possession of the carrier is only that of a warehouseman, the carrier may be held liable as a garnishee in respect to such property." And again: "But where property is consigned to an agent of the consignor, it is subject to process of garnishment while still in the constructive possession of the consignor, and will be subject to garnishment, although stored in the United States Custom House."

In Freeman on Executions, sec. 160, it is said: "There is no reason why a common carrier should not be liable to the trustee process in the same manner as other bailees are, unless the nature of his contract is such that a judgment charging him as trustee would not protect him against a claim of the defendant, for a non-delivery of the goods at their place of destination. But we are of the opinion that such judgment would be a sufficient excuse to the trustee for the failure to deliver according to his contract." See also, Schouler on Bailments and Carriers, sec. 498.

But it is said that the levy upon the machine after the transit had ended, and while the goods were in the warehouse of the railroad company, is a violation of the law as to interstate commerce. We insist that even if such a position were tenable it cannot avail the plaintiffs in error. The point has been distinctly decided by this Court, in *O'Neil v. Vermont, supra.* This Court said:

"The Supreme Court of Vermont decided the case before us upon a ground broad enough to maintain its judgment *without considering any Federal questions.* No Federal

question was presented for its decision, as to this case, nor was the decision of a Federal question necessary to the determination of this case, nor was any actually decided, *nor does it appear that the judgment, as rendered, could not have been given without deciding one. Hale v. Akers,* 132 U. S., 554, and cases there cited. * * * It was entirely immaterial how the liquor sold by O'Neil, at Rutland, came to be there, *for sale there*—whether it was made there, or whether it was brought in some way from the State of New York. The only question was whether it was at Rutland, so as to be capable of sale there, and *whether it was sold there.*" The italics are made by the defendant in error. The O'Neil case is precisely similar to that at bar. The sale was made under the same circumstances, and it was held to be *a sale* in Vermont. Let us suppose the Vermont statute to have provided, not for total prohibition, but against a sale without license, could it possibly be argued with any show of reason that the result of the decision would have been different? Would not the Court, after holding that the sale was made in Vermont, have held that no Federal question was necessarily involved, and that the ground of the State decision was "broad enough to maintain its judgment without considering any Federal question?"

We respectfully urge that the principle applies here, and that no Federal question need be nor can be considered.

If the sale is made or completed in this State by the agents of the Chicago company, the railroad company and its agent, why are not the latter also liable under the act, as his Honor decided? The act provides that if the tax be paid by the Chicago company, no additional tax shall be required of any of its agents. Here, as we have seen, the tax was not paid, and these agents have in various parts of the State been

engaged in making or completing sales in this State for their principal, the Chicago company. We insist that they are all liable under the act.

JAMES E. SHEPHERD,
ROBERT D. GILMER,
Attorney-General,
For the Defendant in Error.

Supreme Court of the United States.

No. 74.—October Term, 1903.

The Norfolk and Western Railway Company et al., Plaintiffs in Error,
vs.
John R. Sims, Sheriff, &c.

In error to the Supreme Court of the State of North Carolina.

[December 7, 1903.]

This was a controversy between the sheriff of Person County, North Carolina, on the one part, and the Railway Company and Mrs. O. L. Satterfield on the other, which might have been the subject of a civil action, and which the parties agreed to submit, under the code of North Carolina, to the judge of the Superior Court upon the following facts, and upon the question of the liability of the defendants for a license tax under section 52 of "An act to raise revenue," ratified March 15, 1901. (Laws of 1901, p. 116.) The material part of the section reads as follows:

"Every manufacturer of sewing machines, and every person or persons or corporation engaged in the business of selling the same in this State, shall, before selling or offering for sale any such machine, pay to the State treasurer a tax of $350 and obtain a license, which shall operate for one year from the date of the issue."

The Norfolk and Western Railway Company, a Virginia corporation, operates a railroad from its main line at Lynchburg, Virginia, via Roxboro in Person County, North Carolina, to Durham in the same State. This company had itself complied with the revenue act of 1901, and paid a license tax for the privilege of carrying on its business as a common carrier within the State of North Carolina.

Sears, Roebuck & Company, (incorporated,) of the city of Chicago, are manufacturers and dealers in sewing machines at Chicago, Illinois.

The defendant, Mrs. Satterfield, a resident of Person County, N. C., about November 1, 1901, sent an order by mail to Sears, Roebuck & Co., for a sewing machine, which was shipped by them as railroad freight from Chicago to Mrs. Satterfield at Roxboro, the railway company at Chicago issuing, on behalf of itself and its connecting railroad lines, a through bill of lading therefor, under which the sewing machine was to be delivered to Mrs. Satterfield on surrender of the bill of lading and payment of freight charges to the delivering carrier, the Norfolk and Western Railway Co.

The bill of lading was sent by Sears, Roebuck & Co. by express, C. O. D., to the express agent at Roxboro, who received from Mrs. Satterfield the

price of the sewing machine, and delivered the bill of lading to her. The express agent and the railway station agent were one and the same person. Mrs. Satterfield having paid the purchase price, presented the bill of lading to the station agent, tendered the freight charges, and demanded the delivery of the sewing machine.

The railway company was willing and would have delivered the same had not the plaintiff, the sheriff and *ex officio* tax collector of Person County, insisted that Sears, Roebuck & Co. could not sell the machine to Mrs. Satterfield without paying the license tax of $350, and forbade the delivery of the machine until the tax was paid, and thereupon levied upon the machine for such tax. He also insisted that the railway company would, by delivering the machine, be acting as the agent of Sears, Roebuck & Co., and would be liable to prosecution for misdemeanor in aiding and abetting them in an unlawful sale of the sewing machine.

It also appears in the agreed statement of facts that other machines were sent by the same consignors to various purchasers in North Carolina, upon the lines of other interstate railroads, and were delivered upon the presentation of other bills of lading under the same conditions as above described.

The court found that Sears, Roebuck & Co. were indebted to the State for $350 license tax; that the levy upon the machine was lawful and valid, and plaintiff was ordered to sell the machine and apply the proceeds to the payment of the tax. The judgment was affirmed by the Supreme Court of the State. (130 N. C. 556.)

Mr. Justice Brown delivered the opinion of the Court.

To the ordinary mind it seems a somewhat startling proposition that a manufacturing corporation, located and doing its main business in a distant city, having no manufactory in North Carolina, no stock in trade, no place for the sale of its goods there, and no agent authorized to sell them, can be compelled to take out a license required of all those "engaged in the business of selling," from the mere fact that it had done what hundreds of others were doing daily—sent a single machine there upon a written order of a customer and under an ordinary C. O. D. consignment. If this may be done, the revenues of every State may be largely increased by adopting a similar system, since a large part of the business of retail shops in the principal cities is done by orders received, filled and the goods delivered in the same way. Of course, it is impossible to estimate the number of business houses in other States which are accustomed to collect their accounts in this manner.

If this were the law it would also follow that the consignor of every cargo of wheat sent to New York for export under a bill of lading, accom-

panied by a draft for the payment of the money in the usual method, might be compelled to take out a license in the State of New York as a dealer in produce, notwithstanding that all the real business was done in Chicago or North Dakota.

So, too, what the State may do directly it may authorize its municipalities to do, and if, under legislative sanction, each of the large towns in the State of North Carolina saw fit to adopt a similar license tax, the consequence would be, not a simple interference with interstate commerce, but a practical destruction of one important branch of it.

While it may be entirely true that the property in the thing sold does not pass under a C. O. D. consignment until delivery of the goods and payment to the carrier, and hence it may be said that the sale is not completed until then, yet as matter of fact the bargain is made and the contract of sale completed as such, when the order is received in Chicago, and the machine shipped in pursuance thereof.

A sale really consists of two separate and distinct elements: first, a contract of sale, which is completed when the offer is made and accepted; and, second, a delivery of the property which may precede, be accompanied by, or follow[illegible], the payment of the price, as may have been agreed upon between the parties. The substance of the sale is the agreement to sell and its acceptance. That possession shall be retained until payment of the price may or may not have been a part of the original bargain, but in substance it is a mere method of collection, and we have never understood that a license could be imposed upon this transaction, except in connection with the prior agreement to sell, although in certain cases arising under the police power it has been held that the sale is not complete until delivery, and sometimes not until payment. Were it not for the opinion of the Supreme Court of North Carolina, we should have said that the words "engaged in the business of selling the same within the State" had reference to the word "selling" in its popular and ordinary sense, of selling from a stock on hand or upon a special order to a manufacturer, and not to a mere method of collecting the money; but, however this may be, it is evident the State courts could not give it a construction which would operate as an interference with interstate commerce, and that upon this question the opinion of this court is controlling.

The cases relied upon by the State do not support its contention. In *Machine Co.* v. *Gage*, (100 U. S. 676,) a Connecticut corporation, manufacturing sewing machines at Bridgeport, had an agency at Nashville, Tennessee, from which an agent was sent out to sell machines. It was held that he was subject to a license tax upon "all peddlers of sewing machines, without regard to the place of growth or produce of material or manufacture." As it appeared that the sale was made, and wholly made, in the State of Tennessee, and apparently from a stock kept in that State, through an agent

of the company, the case is not in point. This case was followed, upon a similar state of facts in *Emert* v. *Missouri*, (156 U. S. 296.)

The case most earnestly pressed upon attention, however, is that of *O'Neil* v. *Vermont*, (144 U. S. 323.) This was a prosecution before a justice of the peace for selling, furnishing, and giving away intoxicating liquors. The defendant was a dealer in liquors at Whitehall, New York, and was in the habit of receiving at his store orders for liquors from Vermont, accompanied by a jug to contain the liquor; and the liquors, as as in this case, were sent under a C. O. D. consignment.

It was held by this court that, as the only question considered by the Supreme Court in its opinion was whether the liquor was sold by O'Neil at Rutland, or at Whitehall, and the court arrived at the conclusion that the completed sale was in Vermont, that this conclusion did not involve any Federal question, and the writ of error was dismissed. Mr. Justice Blatchford took express pains to say that "no point on the commerce laws of the Constitution of the United States was taken in court, . . . or considered by the Supreme Court of Vermont." The case was put by the Supreme Court of the State solely upon its police power. "If," said that court, "an express company or any other carrier, or person, natural or corporate, has in possession within this State an article in itself dangerous to the community, or an article intended for unlawful or criminal use within the State, it is a necessary incident of the police powers of the State that such article should be subject to seizure for the protection of the community."

It will thus be seen that the Supreme Court of Vermont disclaimed the decision of the very question involved in this case as to the power of the States to interfere with interstate commerce by taxation of the thing imported, and the writ of error was dismissed upon the ground that no Federal question was presented for its decision, and none was necessary to the determination of the case. Mr. Justice Field, in his dissenting opinion, thought the commerce clause of the Constitution was involved, and that the transaction was a clear interference with commerce between the States

Upon the other hand, for the past seventy-five years and ever since the original case of *Brown* v. *Maryland*, (12 Wheat. 419,) we have uniformly held that States have no power to tax directly or by license upon the importer, goods imported from foreign countries or other States, while in their original packages, or before they have become commingled with the general property of the State and lost their distinctive character as imports. In that case a law of Maryland required importers to take out a license before they could be permitted to sell their imported goods. That was declared to be void not only as a tax upon imports, but as an infringment upon the power of Congress to regulate commerce. The case is one of the most

important ever decided by this court, and has been adhered to by a uniform series of decisions since that time.

In *Robbins* v. *Shelby Taxing District*, (120 U. S. 489,) it was declared that a tax upon commercial agents not having a business house in the State, was unconstitutional as a regulation of commerce when applied to soliciting the sale of goods on behalf of individuals or firms doing business in another State, Mr. Justice Bradley remarking, apropos of what was subsequently decided in *O'Neil* v. *Vermont*, "that the only way in which commerce between the States can be legitimately affected by State laws is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health and comfort of persons and protection of property; or, when it does those things which may otherwise incidentally affect commerce, such as . . . the imposition of taxes upon all property within the State, mingled with and forming part of the great mass of property therein. But in making such internal regulations a State cannot impose taxes . . . upon property imported into the State from abroad, or from another State, and not yet become part of the common mass of property therein, . . . and no regulation can be made directly affecting interstate commerce." This case was affirmed in *Asher* v. *Texas*, (128 U. S. 129.)

The same rule was applied in *Welton* v. *Missouri*, (91 U. S. 275,) and *Walling* v. *Michigan*, (116 U. S. 446,) to a statute requiring the payment of a license from persons dealing in merchandise, not the growth, produce or manufacture of the State, and requiring no such license from persons selling goods grown, produced or manufactured within the State. In *McCall* v. *California*, (136 U. S. 104,) a license tax imposed upon the agent of a railroad between Chicago and New York soliciting business in San Francisco, was held to be void. To the same effect are *Crutcher* v. *Kentucky*, (141 U. S. 47;) *Brennan* v. *Titusville* (153 U. S, 389,) and *Stockard* v. *Morgan*, (185 U. S. 27.) Finally, in *Caldwell* v. *North Carolina*, (187 U. S. 622,) another of the same line of cases, it was held that a city ordinance imposing a license upon every person engaged in the business of selling or delivering picture frames, &c., was an interference with interstate commerce, so far as applied to picture frames made in other States and shipped to an agent in the State of North Carolina; and that the transaction was not taken out of the protection of the commerce clause by the fact that the agent placed the pictures in their proper frames, and delivered them to the persons ordering them. Most of the prior cases are noticed in this opinion.

Indeed, the cases upon this subject are almost too numerous for citation, and the one under consideration is clearly controlled by them. The sewing machine was made and sold in another State, shipped to North Carolina

in its original package for delivery to the consignee upon payment of its price. It had never become commingled with the general mass of property within the State. While technically the title of the machine may not have passed until the price was paid, the sale was actually made in Chicago, and the fact that the price was to be collected in North Carolina is too slender a thread upon which to hang an exemption of the transaction from a rule which would otherwise declare the tax to be an interference with interstate commerce.

The judgment of the Supreme Court of North Carolina is therefore reversed and the case remanded to that court for further proceedings not inconsistent with this opinion.

Mr Justice HOLMES did not participate in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.